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Nominations to Article III Lower Courts by President George W. Bush During the 110th Congress

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Summary

This report tracks nominations made by President George W. Bush to judgeships on the U.S. courts of appeals, the U.S. district courts, and the U.S. Court of International Trade — the lower courts on which, pursuant to Article III of the Constitution, judges serve "during good Behaviour." It lists and keeps count of all nominations made to these courts during the 110th Congress, including pertinent actions taken by the Senate Judiciary Committee and the full Senate. It also tracks the number of judicial vacancies on the courts (including vacancies classified by the federal judiciary as "judicial emergencies"), the number of nominations pending to fill the vacancies, and the names of the pending nominees. It presents the number of persons nominated by President Bush to each category of lower Article III court during his entire presidency (breaking down each total to show the number confirmed, pending, returned and not re-nominated, and withdrawn). Last, it provides a tabular comparison of President Bush's lower court nominee statistics with those of the four Presidents who immediately preceded him:

As of May 28, 2008:

- President Bush had nominated 20 individuals to the U.S. courts of appeals during the 110th Congress, with the Senate having confirmed eight of them, and with two withdrawn by the President.
- President Bush had nominated 61 individuals to the U.S. district courts during the 110th Congress, with the Senate having confirmed 38 of them, and with one withdrawn by the President.
- There were 11 judicial vacancies on the U.S. courts of appeals, with 10 nominations pending to fill these vacancies.
- There were 36 U.S. district court vacancies, with 21 nominations pending to fill these judgeships, and an additional one nomination pending to fill a future district court vacancy.
- No vacancies had occurred on the U.S. Court of International Trade during the 110th Congress (and thus no nominations have been made to the court during the Congress).

During the entire presidency of George W. Bush (from January 20, 2001, to May 28, 2008), there have been 352 nominees to Article III lower court judgeships. Of the 352 total nominees, 32 are pending, 302 have received Senate confirmation, nine have been returned to the President in a previous Congress and not resubmitted, and nine have been withdrawn by the President and not resubmitted.

For corresponding information about President Bush's appeals and district court nominations during earlier Congresses, see CRS Report RL31868, *U.S. Circuit and District Court Nominations by President George W. Bush During the 107th-109th Congresses*, by Denis Steven Rutkus, Kevin M. Scott, and Maureen Bearden.

This report will be updated to record new actions by President Bush, the Senate Judiciary Committee, or the Senate involving Article III lower court nominations.

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Nominations to Article III Lower Courts by President George W. Bush During the 110th Congress

Introduction

Under Article III of the Constitution of the United States, the appointment of individuals to lifetime positions on the lower federal courts (the U.S. courts of appeals, U.S. district courts, and U.S. Court of International Trade) requires Senate confirmation.[1] In recent years, Congress has expressed increasing interest in the nomination and confirmation process for lower federal court judges.[2] During the 110th Congress, the number of lower court nominations by President George W. Bush that have been confirmed or are likely to be confirmed has been a subject of continuing Senate interest.[3]

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[1] For an overview of the process for appointing lower court judges (and the respective roles played in that process by the President, the Senate Judiciary Committee, and the full Senate), see the **Appendix**.

[2] See, for example, Nancy Scherer, *Scoring Points: Politicians, Activists, and the Lower Federal Court Appointment Process* (Stanford, CA: Stanford University Press, 2005); Lee Epstein and Jeffrey A. Segal, *Advice and Consent: The Politics of Judicial Appointments* (New York: Oxford University Press, 2005); Sheldon Goldman, "Judicial Confirmation Wars: Ideology and the Battle for the Federal Courts," *University of Richmond Law Review*, vol. 39, March 2005, pp. 871-908; Stephen B. Burbank, "Politics, Privilege & Power: The Senate's Role in the Appointment of Federal Judges," *Judicature*, vol. 86, July-August 2002, pp. 24-27; and Elliot E. Slotnick, "A Historical Perspective on Federal Judicial Selection," *Judicature*, vol. 86, July-August 2002, pp. 13-16.

[3] On April 15, 2008, for instance, in a colloquy on the Senate floor, the Senate Democratic majority leader and the Senate Republican leader discussed the number of nominations to the U.S. circuit courts of appeals which might be expected to be confirmed in the 110th Congress before Memorial Day, May 26, 2008. The majority leader, Sen. Harry Reid of Nevada, stated that he and the chairman of Senate Judiciary Committee, Sen. Patrick J. Leahy of Vermont, "are going to do everything we can to approve three circuit court judges by Memorial Day." He stated, however, that "[a]fter June, we will have to take a real close look at judges in a Presidential election year." The Republican leader, Sen. Mitch McConnell of Kentucky, noted that an average of 17 circuit court nominations received Senate confirmation during the last two years of the three previous presidencies. In the 110th Congress, he said, "we are running dramatically behind," with only seven circuit court nominations confirmed thus far, which he said was "a paltry number in comparison to how President Reagan, President [George H. W.] Bush, and President Clinton were handled in a similar situation." Sen. Harry Reid and Sen. Mitch McConnell, remarks in the Senate, *Congressional Record*, daily edition, vol. 154, April 15, 2008, pp. S3012-S3014. Between April 15 and May 28, 2008, the Senate (on May 20) confirmed one more circuit court of

(continued...)

To provide Congress with a current overview of the lower court appointment process, this report tracks the status of certain lower court nominations made by President George W. Bush during the 110th Congress. The report deals primarily with nominations to lower Article III courts (those courts on which judges serve "during good Behaviour"), while also accounting for infrequent nominations to the small number of territorial district judgeships, which have fixed-term appointments.[4]

The Article III Lower Courts

Article III, Section 1 of the Constitution provides, in part, that the "judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." It further provides that justices on the Supreme Court and judges on lower courts established by Congress under Article III have what effectively has come to mean life tenure, holding their office "during good Behaviour."[5] By contrast, judges in various federal courts established by Congress under Article I of the Constitution are appointed for fixed terms.[6] Along with the Supreme Court, the courts that constitute the Article III courts in the federal judicial system are the U.S. courts of appeals, the U.S. district courts, and the U.S. Court of International Trade. The following are thumbnail descriptions of each of the lower Article III courts:

The U.S. Courts of Appeals. These courts take appeals from federal trial court decisions and are empowered to review the decisions of many administrative agencies. Cases presented to these courts are generally considered by judges sitting in three-member panels. Altogether, 178 permanent appellate court judgeships are authorized by law.[7] Courts within the courts of appeals system are often called "circuit courts," because they are divided into 12 geographic circuits and an

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[3] (...continued)
appeals nominee, bringing to eight the total number confirmed thus far in the 110th Congress.

[4] For a detailed narrative and statistical analysis of President George W. Bush's lower court nominations during the first six years of his presidency, see CRS Report RL31868, *U.S. Circuit and District Court Nominations by President George W. Bush During the 107th-109th Congresses*, by Denis Steven Rutkus, Kevin M. Scott, and Maureen Bearden.

[5] Pursuant to this constitutional language, Article III judges may hold office for as long as they live or until they voluntarily leave office. A President has no power to remove them from office. Article III judges may be removed by Congress only through the process of impeachment by the House and conviction by the Senate.

[6] Citing the power to do so in Article I of the Constitution, Congress, in separate statutes, has created four courts of specialized subject matter jurisdiction — the U.S. Court of Federal Claims, the U.S. Tax Court, the U.S. Court of Appeals for Veterans Claims, and the Court of Appeals for the Armed Forces — and has authorized 15-year judicial tenure in these courts.

[7] On January 7, 2008, President George W. Bush signed H.R. 660, the Court Security Improvement Act of 2007 (P.L. 110-77, 121 Stat. 2534). Among other things, the act decreased the number of judgeships in the D.C. Circuit Court of Appeals from 12 to 11 and, effective January 21, 2009, increased the number of judgeships on the Ninth Circuit Court of Appeals from 28 to 29. Accordingly, there are 178 judgeships on the courts of appeals until January 21, 2009, when, barring any other adjustment, that number will rise to 179.

additional nationwide circuit, the Federal Circuit, which has specialized subject matter jurisdiction. In this report, nominations to U.S. courts of appeals judgeships are, at various points, also referred to as "circuit court nominations."

The U.S. District Courts. These are the trial courts of general federal jurisdiction. Each state has at least one district court, while some states have as many as four. There are 674 district court judgeships authorized by law, including those for the District of Columbia and the Commonwealth of Puerto Rico.[8]

The U.S. Court of International Trade. This court has original and exclusive jurisdiction over civil actions against the United States, its agencies and officers, and certain civil actions brought by the United States arising out of import transactions and federal statutes affecting international trade. The court is composed of nine judges, no more than five of whom may belong to one political party.

Congress also has established district courts in the territories of Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. Like the U.S. district courts, the territorial courts are trial courts of general federal jurisdiction, while also having jurisdiction over many local matters that, within the 50 states, are handled in state courts. Because they are trial courts of general federal jurisdiction, whose rulings may be appealed to a U.S. court of appeals,[9] the territorial courts can be viewed as a category of court falling within the federal district court system.[10] Territorial courts, however, are not Article III courts, and judicial appointees to these courts serve 10-year terms, with one judgeship each in Guam and the Northern Mariana Islands, and two in the Virgin Islands.

Judicial Nomination Data Tracked

This report lists and keeps count of all nominations made to the above-discussed courts during the 110th Congress, including certain actions taken on these

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[8] The 674 total consists of 663 permanently authorized judgeships and 11 "temporary" judgeships (which, pursuant to statute, temporarily increase the *number* of judgeships for specified judicial districts. These districts revert back to the permanently authorized number of judgeships at a future time fixed by the statute — typically, when, after a specified number of years, a judgeship in the district is vacated).

[9] Decisions of the U.S. District Courts for the District of Guam and the District of the Northern Mariana Islands are appealed to the Ninth Circuit Court of Appeals. Decisions of the U.S. District Court for the District of Virgin Islands are appealed to the Third Circuit Court of Appeals.

[10] For instance, the federal judiciary subsumes territorial courts under the heading of "District Courts" in various places on its website, at [http://www.uscourts.gov]. In one link on the website, entitled "Authorized Judgeships," accessed via [http://www.uscourts.gov/judicialvac.html], the judiciary lists the number of authorized judgeships, respectively, on the Supreme Court, the circuit courts, the district courts, and the Court of International Trade. The link, under the heading of "District Courts," provides an "Article III" sub-heading (with 674 judgeships) and a "Territorial Court" sub-heading (with 4 judgeships), and, in an adjacent column, 678 is shown to be total number of judgeships for the "District Courts" heading.

nominations by the Senate Judiciary Committee and the full Senate. The report also provides statistics for all of the nominations that President Bush has made to these courts during his entire presidency, starting with the 107th Congress in January 2001 and carrying through to the present. (Thus far in the 110th Congress, no nominations have been made either to the U.S. Court of International Trade or to the territorial district courts, although President Bush made, and the Senate confirmed, nominations to these courts during previous Congresses.)

In the following pages, President Bush's nominations to the lower Article III courts are listed or counted in **Tables 1** through **6**. Some of these tables, where noted, also keep track of nominations made to the territorial courts. **Appendix 1** provides a brief textual overview of the principal steps in the process for appointing lower court judges.

Judicial Nomination Tables for the 110th Congress

Table 1 is a judicial vacancy table. For each type of Article III lower court — circuit, district, and Court of International Trade — it shows the number of judgeships vacant as of the date listed, as well as the number of nominations pending to fill those judgeships. **Table 1** also displays the number of nominations pending to fill "future vacancies," which occur when judges in active service announce their retirement to occur on a date that has not yet been reached or when a judge in active service indicates a plan to retire or take senior status upon the confirmation of a successor.

In addition, **Table 1** shows how many of these vacancies are classified by the federal judiciary as "judicial emergencies." For the courts of appeals, a judicial emergency is any vacancy in a circuit where there are more than 700 adjusted filings per panel, or any vacancy in a circuit that has existed for more than 18 months and where adjusted filings are between 500 to 700 per panel.[11] For a district court, a judicial emergency is any vacancy in a district where weighted filings exceed 600 per judgeship, or any vacancy in existence more than 18 months where weighted filings are between 430 and 600 per judgeship, or any court with more than one authorized judgeship and only one active judge.[12]

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[11] "Adjusted filings" eliminate reinstated cases and weight *pro se* appeals as one-third of a case. All other cases have a weight of one. The number of adjusted filings in a given year is then divided by the number of three-judge panels on a circuit (e.g., a circuit with 7 authorized judgeships has 2.33 panels). Adjusted filings data are updated every three months.

[12] "Weighted filings" use a system developed by the Federal Judicial Center to account for how much of a judge's time each case type should take. Like adjusted filings data, it is an annual measure of court workload updated every three months. According to the Administrative Office for the United States Courts, "average civil cases or criminal defendants each receive a weight of approximately 1.0; for more time-consuming cases, higher weights are assessed (e.g., a death-penalty habeas corpus case is assigned a weight of 12.89); and cases demanding relatively little time from judges receive lower weights (e.g., a defaulted student loan case is assigned a weight of 0.031)." See [http://www.uscourts.gov/

Table 1. Vacancies in Article III Lower Court Judgeships

(as of May 28, 2008)

Court	Vacancies	Nominations Pending		Judicial Emergencies	
		For Existing Vacancies	For Future Vacancies	Number	Nominees Pending
U.S. Courts of Appeals	11	10	0	8	7
U.S. District Courts	36	21	1	8	6
U.S. Court of International Trade	0	0	0	0	0
Total	47	31	1	16	13

Source: CRS analysis of data provided by the Administrative Office for the United States Courts, available at [http://www.uscourts.gov/judicialvac.html].

Table 2, which lists pending nominations, presents all Article III lower court nominations made during the 110th Congress that were pending as of the date listed. The table shows the date each nomination was received by the Senate, the date of any hearing on the nomination before the Judiciary Committee, and the date of any vote by the committee to report the nomination to the Senate. The table also indicates which nominations in the list are renominations — persons nominated to the same judgeship either earlier in the 110th Congress or in a previous Congress.

Table 2. Pending Nominations to the U.S. Courts of Appeals, District Courts, and Court of International Trade in the 110th Congress

(as of May 28, 2008)

No.	Name of Nominee	Court	Date		
			Received by Senate	Hearing	Committee Action
Circuit Courts of Appeals					
1	Keisler, Peter D.[a]	D.C.	1/9/07	[b]	
2	Kethledge, Raymond M.[a]	Sixth	3/19/07	5/7/08	
3	Conrad, Robert J., Jr.	Fourth	7/17/07		
4	Stone, Shalom D.	Third	7/17/07		
5	Matthews, Steve A.	Fourth	9/6/07		
6	Pratter, Gene E.K.	Third	11/15/07		
7	Rosenstein, Rod J.	Fourth	11/15/07		
8	Smith, William E.	First	12/6/07		
9	White, Helene N.	Sixth	4/15/08	5/7/08	

[12] (...continued)
library/fcmstat/cmsexpl06.html].

No.	Name of Nominee	Court	Date		
			Received by Senate	Hearing	Committee Action
10	Conrad, Glen E.	Fourth	5/8/08		
District Courts					
1	Farr, Thomas Alvin [a]	E.NC	1/9/07		
2	Rogan, James E.[a]	C.CA	1/9/07		
3	Dugas, David R.	M.LA	3/19/07		
4	Honaker, Richard H.	WY	3/19/07	2/12/08	
5	Powell, William J.	N.WV	5/24/07		
6	Puryear, Gustavus A., IV	M.TN	6/13/07	2/12/08	
7	Almond, Lincoln D.	RI	11/15/07		
8	Davis, Mark S.	E.VA	11/15/07	4/3/08	4/24/08
9	Kays, David G.	W.MO	11/15/07	4/3/08	4/24/08
10	Novak, David J.	E.VA	11/15/07	4/3/08	
11	Short, Carolyn P.	E.PA	11/15/07		
12	Limbaugh, Stephen N., Jr	E.MO	12/6/07	4/3/08	4/24/08
13	Snow, G. Murray	AZ	12/11/07	5/1/08	5/22/08
14	Suddaby, Glenn T.	N.NY	12/11/07		
15	Lawrence, William T.	S.IN	2/14/08	5/1/08	5/22/08
16	Connolly, Colm F.	DE	2/26/08		
17	Matsumoto, Kiyo A.	E.NY	3/11/08		
18	Seibel, Cathy	S.NY	3/11/08		
19	Murphy, Stephen J., III	E.MI	4/15/08	5/7/08	
20	Gardephe, Paul G.	S.NY	4/29/08		
21	Waddoups, Clark	UT	4/29/08		
22	Anello, Michael M.	S.CA	4/30/08		
Court of International Trade					
(There are no pending nominations to the Court of International Trade.)					

Source: CRS Judicial Nominations Database

a. Renomination of an individual first nominated in the 109th Congress (2005-2006).
b. The individual received a hearing in the 109th Congress on a nomination to the same position.

Tables 3 and **4** list all nominations to the circuit courts of appeals and to the district courts, respectively, made by President Bush during the 110th Congress, as of the date listed, and any actions taken on the nominations.[13] The nominations are listed in chronological order according to the date on which each was received by the Senate. The tables show how far along each nomination has progressed in the appointment process, with separate columns indicating the date on which any of the following occurred:

[13] In the event any nominations are made to the territorial district courts, they will be listed in **Table 4**, and treated as falling within the category of district court nominations, even though, as discussed above, they are not Article III court nominations. Thus far during the 110th Congress, no nominations have been made to the territorial courts.

- the Judiciary Committee held a hearing on the nomination,
- the committee voted to report or take other action on the nomination, or
- final action was taken on the nomination.

When final action has occurred on a nomination, the nature of the action is indicated in another column, under the heading "Disposition." (For each nomination, one of four kinds of disposition is possible — confirmation by the Senate, return of the nomination to the President, withdrawal by the President, and rejection by the Senate. During George W. Bush's presidency, however, the Senate has never voted to reject a judicial nomination.) An additional column, for nominations receiving a Senate confirmation vote, indicates whether the vote was by roll call (by supplying the roll call tally) or by voice vote.

A final column in **Tables 3** and **4** presents time-span information for nominations having received final action in the 110th Congress. Specifically, for each such nomination, the column measures the number of days that elapsed between a nominee's first nomination to a particular court and the final action on this (the most recent) nomination. In some cases, a nominee has been nominated only once by President Bush for a judgeship, and the time span measured for such a nominee in the final column in **Tables 3** and **4** is the number of days that elapsed between the date during the 110th Congress that the nomination was received in the Senate and the date it received final action. However, in other cases, a judicial nominee in the 110th Congress has been nominated more than once, with one or more nominations of that person having been made in an earlier Congress. For such a nominee, the final column in **Tables 3** and **4** measures the number of days that elapsed between the nominee's first nomination in the earlier Congress and the date that the nominee's nomination in the 110th Congress received final action.[14]

Table 3 shows that, thus far in the 110th Congress, President Bush has nominated 20 individuals to circuit court judgeships,[15] eight of whom have been confirmed by the Senate, and the nominations of two were withdrawn by the President. **Table 4** shows that, thus far in the 110th Congress, the President has nominated 61 individuals to district court judgeships. Of those 61, 38 have been confirmed, and the nomination of one was withdrawn by the President.

Table 5, for the present, is an empty table, which exists to account for any future nominations that President Bush might make to the U.S. Court of International Trade. (Thus far during the 110th Congress, no nominations have been made to this

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[14] In the event a person were nominated for the first time to a judgeship during the 110th Congress, only to be re-nominated during the 110th Congress, the final column in **Tables 3** and **4** would show, in the row for the nominee's last nomination, the time elapsed between date of first nomination and date of final action on the last nomination.

[15] While **Table 3** lists 21 nominations to the courts of appeals, the number of persons nominated is 20. The 21 nominations include two of the same person, N. Randy Smith. As **Table 3** shows, Smith's first nomination in the 110th Congress to a particular seat on the Ninth Circuit was withdrawn on the same day that he was renominated for a different Ninth Circuit seat.

court.) The table is of the same format as **Tables 3** and **4**. Accordingly, in the event any nominations are made to the court, the table will list actions on the nominations by the Judiciary Committee and the Senate, any other final action taken, and number of days elapsed between the date of nomination and date of final action.

Table 3. President George W. Bush's Nominations to the U.S. Circuit Courts of Appeals During the 110th Congress

(January 3, 2007 - May 28, 2008)

No.	Name of Nominee	State	Court	Date				Disposition	Vote[a]	Days Elapsed, First Nomination to Final Action[b]
				Nomination Received	Hearing	Committee Action	Final Action			
1	Hardiman, Thomas M.[c]	PA	Third	1/9/07	[e]	3/8/07	3/15/07	Confirmed	95-0	183
2	Keisler, Peter D.[c]	MD	D.C.	1/9/07	[e]					
3	Livingston, Debra A.[c]	NY	Second	1/9/07	4/11/07	5/3/07	5/9/07	Confirmed	91-0	315
4	Smith, N. Randy [c]	ID	Ninth	1/9/07	[e]		1/16/07	Withdrawn	—	—
5	Southwick, Leslie	MS	Fifth	1/9/07	5/10/07	8/2/07	10/24/07	Confirmed	59-38	288
6	Smith, N. Randy [cd]	ID	Ninth	1/16/07	[e]	2/8/07	2/15/07	Confirmed	94-0	426
7	Kethledge, Raymond M.[c]	MI	Sixth	3/19/07	5/7/08					
8	Murphy, Stephen J., III [c]	MI	Sixth	3/19/07			4/15/08	Withdrawn	—	657
9	Elrod, Jennifer W.	TX	Fifth	3/29/07	7/19/07	9/20/07	10/4/07	Confirmed	Voice	189
10	Conrad, Robert J., Jr.	NC	Fourth	7/17/07						
11	Haynes, Catharina	TX	Fifth	7/17/07	2/21/08	4/3/08	4/10/08	Confirmed	Voice	268
12	Stone, Shalom D.	NJ	Third	7/17/07						
13	Tinder, John D.	IN	Seventh	7/17/07	9/25/07	11/1/07	12/18/07	Confirmed	93-0	154
14	Matthews, Steve A.	SC	Fourth	9/6/07						
15	Getchell, E. Duncan, Jr.	VA	Fourth	9/6/07			1/23/08	Withdrawn	—	139
16	Pratter, Gene E.K.	PA	Third	11/15/07						
17	Rosenstein, Rod J.	MD	Fourth	11/15/07						

No.	Name of Nominee	State	Court	Date				Disposition	Vote[a]	Days Elapsed, First Nomination to Final Action[b]
				Nomination Received	Hearing	Committee Action	Final Action			
18	Smith, William E.	RI	First	12/6/07						
19	Agee, G. Steven	VA	Fourth	3/13/08	5/1/08	5/12/08	5/20/08	Confirmed	96-0	68
20	White, Helene N.	MI	Sixth	4/15/08	5/7/08					
21	Conrad, Glen E.	VA	Fourth	5/8/08						

Source: CRS Judicial Nominations Database

Notes:

a. A numerical tally indicates a Senate roll call vote on confirmation (the yeas followed by the nays). "Voice" indicates that the Senate confirmed the nomination by voice vote.

b. For individuals nominated in a previous Congress, the values displayed in this column report the number of days which elapsed between the date of the first nomination and the date of the final action on the most recent nomination in the 110th Congress.

c. Renomination of an individual first nominated in the 109th Congress (2005-2006).

d. Smith was withdrawn as a nominee for a seat vacated by Stephen Trott and renominated, the same day, for a seat vacated by Thomas Nelson.

e. The individual received a hearing in the 109th Congress on a nomination to the same position. For additional information, see Appendices 1 and 4 in CRS Report RL31868, *U.S. Circuit and District Court Nominations by President George W. Bush During the 107th-109th Congresses*, by Denis Steven Rutkus, Kevin M. Scott, and Maureen Bearden.

Table 4. President George W. Bush's Nominations to the U.S. District Courts During the 110th Congress

(January 3, 2007 - May 28, 2008)

No.	Name of Nominee	Court	Date				Disposition	Vote[a]	Days Elapsed, First Nomination to Final Action[b]
			Nomination Received	Hearing	Committee Action	Final Action			
1	Bailey, John P.[c]	N.WV	1/9/07	2/6/07	3/1/07	3/15/07	Confirmed	Voice	260
2	Baker, Valerie L.[c]	C.CA	1/9/07	[d]	1/25/07	2/1/07	Confirmed	Voice	273
3	Bryant, Vanessa L.[c]	CT	1/9/07	[d]	3/8/07	3/28/07	Confirmed	Voice	427
4	Donohue, Mary O.[c]	N.NY	1/9/07			9/6/07	Withdrawn	—	435
5	Farr, Thomas A.[c]	E.NC	1/9/07						
6	Fischer, Nora B.[c]	W.PA	1/9/07	[d]	2/8/07	2/14/07	Confirmed	97-0	216
7	Frizzell, Gregory K.[c]	N.OK	1/9/07	[d]	1/25/07	2/1/07	Confirmed	99-0	239
8	Gutierrez, Philip S.[c]	C.CA	1/9/07	[d]	1/25/07	1/30/07	Confirmed	97-0	281
9	Howard, Marcia M.[c]	M.FL	1/9/07	[d]	2/8/07	2/15/07	Confirmed	93-0	253
10	Jarvey, John A.[c]	S.IA	1/9/07	[d]	2/8/07	3/8/07	Confirmed	95-0	253
11	Kapala, Frederick J.[c]	N.IL	1/9/07	3/13/07	4/25/07	5/8/07	Confirmed	91-0	154
12	Lioi, Sara E.[c]	N.OH	1/9/07	[d]	2/8/07	3/8/07	Confirmed	Voice	238
13	Mauskopf, Rosslyn R.[c]	E.NY	1/9/07	4/11/07	7/19/07	10/4/07	Confirmed	Voice	428
14	O'Grady, Liam[c]	E.VA	1/9/07	5/10/07	5/24/07	7/9/07	Confirmed	88-0	341
15	O'Neill, Lawrence J.[c]	E.CA	1/9/07	[d]	1/25/07	2/1/07	Confirmed	97-0	183
16	Osteen, William L., Jr.[c]	M.NC	1/9/07	6/20/07	7/19/07	9/10/07	Confirmed	90-0	346
17	Ozerden, Halil S.[c]	S.MS	1/9/07	3/13/07	4/12/07	4/24/07	Confirmed	95-0	231

No.	Name of Nominee	Court	Date				Disposition	Vote[a]	Days Elapsed, First Nomination to Final Action[b]
			Nomination Received	Hearing	Committee Action	Final Action			
18	Reidinger, Martin K.[c]	W.NC	1/9/07	6/20/07	7/19/07	9/10/07	Confirmed	Voice	346
19	Rogan, James E.[c]	C.CA	1/9/07						
20	Schroeder, Thomas D.[c]	M.NC	1/9/07	10/24/07	11/15/07	12/14/07	Confirmed	Voice	441
21	Settle, Benjamin H.[c]	W.WA	1/9/07	3/13/07	4/25/07	6/28/07	Confirmed	99-0	225
22	Van Bokkelen, Joseph S.	N.IN	1/9/07	4/11/07	5/3/07	6/28/07	Confirmed	Voice	170
23	Wood, Lisa G.[c]	S.GA	1/9/07	[d]	1/25/07	1/30/07	Confirmed	97-0	232
24	Wright, Otis D., II[c]	C.CA	1/9/07	2/6/07	3/1/07	3/15/07	Confirmed	Voice	191
25	Wu, George H.[c]	C.CA	1/9/07	2/6/07	3/1/07	3/27/07	Confirmed	96-0	203
26	DeGiusti, Timothy D.	W.OK	2/15/07	6/20/07	7/19/07	8/3/07	Confirmed	96-0	169
27	Sullivan, Richard	S.NY	2/15/07	4/11/07	5/3/07	6/28/07	Confirmed	99-0	133
28	Aycock, Sharion	N.MS	3/19/07	7/19/07	9/6/07	10/4/07	Confirmed	Voice	199
29	Dugas, David R.	M.LA	3/19/07						
30	Hall, James R.	S.GA	3/19/07	2/12/08	3/6/08	4/10/08	Confirmed	Voice	388
31	Honaker, Richard H.	WY	3/19/07	2/12/08					
32	Jones, Richard A.	W.WA	3/19/07	7/19/07	9/6/07	10/4/07	Confirmed	Voice	199
33	Jonker, Robert J.[c]	W.MI	3/19/07	[d]	6/7/07	7/9/07	Confirmed	Voice	376
34	Maloney, Paul L.[c]	W.MI	3/19/07	[d]	5/24/07	7/9/07	Confirmed	Voice	376
35	Neff, Janet T.[c]	W.MI	3/19/07	5/10/07[d]	5/24/07	7/9/07	Confirmed	83-4	376
36	Sammartino, Janis L.	S.CA	3/19/07	6/20/07	7/19/07	9/10/07	Confirmed	90-0	175

No.	Name of Nominee	Court	Date				Disposition	Vote[a]	Days Elapsed, First Nomination to Final Action[b]
			Nomination Received	Hearing	Committee Action	Final Action			
37	Powell, William J.	N.WV	5/24/07						
38	Thapar, Amul R.	E.KY	5/24/07	10/24/07	11/15/07	12/13/07	Confirmed	Voice	203
39	Laplante, Joseph N.	NH	6/13/07	10/24/07	11/15/07	12/14/07	Confirmed	Voice	184
40	Puryear, Gustavus A., IV	M.TN	6/13/07	2/12/08					
41	O'Connor, Reed C.	N.TX	6/27/07	10/24/07	11/15/07	11/16/07	Confirmed	Voice	142
42	Dow, Robert M., Jr.	N.IL	7/18/07	9/25/07	10/4/07	11/13/07	Confirmed	86-0	118
43	Anderson, Stanley T.	W.TN	9/6/07	2/21/08	3/6/08	4/10/08	Confirmed	Voice	217
44	Mendez, John A.	E.CA	9/6/07	2/21/08	3/6/08	4/10/08	Confirmed	Voice	217
45	Miller, Brian S.	E.AR	10/16/07	2/12/08	3/6/08	4/10/08	Confirmed	88-0	177
46	Almond, Lincoln D.	RI	11/15/07						
47	Davis, Mark S.	E.VA	11/15/07	4/3/08	4/24/08				
48	Kays, David G.	W.MO	11/15/07	4/3/08	4/24/08				
49	Novak, David J.	E.VA	11/15/07	4/3/08					
50	Short, Carolyn P.	E.PA	11/15/07						
51	Limbaugh, Stephen N., Jr.	E.MO	12/6/07	4/3/08	4/24/08				
52	Snow, G. Murray	AZ	12/11/07	5/1/08	5/22/08				
53	Suddaby, Glenn T.	N.NY	12/11/07						
54	Lawrence, William T.	S.IN	2/14/08	5/1/08	5/22/08				
55	Connolly, Colm F.	DE	2/26/08						

No.	Name of Nominee	Court	Date				Disposition	Vote[a]	Days Elapsed, First Nomination to Final Action[b]
			Nomination Received	Hearing	Committee Action	Final Action			
56	Matsumoto, Kiyo A.	E.NY	3/11/08						
57	Seibel, Cathy	S.NY	3/11/08						
58	Murphy, Stephen J., III	E.MI	4/15/08	5/7/08					
59	Gardephe, Paul G.	S.NY	4/29/08						
60	Waddoups, Clark	UT	4/29/08						
61	Anello, Michael M.	S.CA	4/30/08						

Source: CRS Judicial Nominations Database

a. A numerical tally indicates a Senate roll call vote on confirmation (the yeas followed by the nays). "Voice" indicates that the Senate confirmed the nomination by voice vote.

b. For individuals nominated in a previous Congress, the values displayed in this column report the number of days which elapsed between the date of the first nomination and the date of the final action on the most recent nomination in the 110th Congress.

c. Renomination of an individual first nominated in the 109th Congress (2005-2006).

d. The individual received a hearing in the 109th Congress on a nomination to the same position. For additional information, see Appendices 5 and 8 in CRS Report RL31868, *U.S. Circuit and District Court Nominations by President George W. Bush During the 107th-109th Congresses*, by Denis Steven Rutkus, Kevin M. Scott, and Maureen Bearden.

Table 5. President George W. Bush's Nominations to the U.S. Court of International Trade During the 110th Congress

(January 3, 2007 - May 28, 2008)

No.	Name of Nominee	State	Court	Date				Days Elapsed, First Nomination to Final Action
				Nomination Received	Hearing	Committee Action	Final Action	
Thus far, during the 110th Congress, there have been no nominations to this court.								

Source: CRS Judicial Nominations Database

Table 6 presents the total number of persons nominated by President Bush to each category of lower Article III court during his entire presidency. The table also breaks down each numerical total, showing, as of the date listed, the number of nominees whose most recent nominations were (1) confirmed; (2) pending in the Senate; (3) returned to the President, at the end of a Congress or at the start of a Senate recess of more than 30 days, and not re-submitted; or (4) withdrawn by the President. This table counts nominees to a particular judgeship only once, even if they were nominated to their judgeship more than once.[16]

Table 6. President George W. Bush's Nominees to Article III Lower Courts: A Numerical Breakdown According to Status of Their Most Recent Nomination

(January 20, 2001 - May 28, 2008)

Court	Confirmed	Pending	Returned, Not Renominated	Withdrawn	Total
Courts of Appeals	59	10	8	5	82
District Courts[a]	241	22	1	4	268
Court of International Trade	2	0	0	0	2
Total	302	32	9	9	352

Source: CRS Judicial Nominations Database

a. Does not include three nominees to the territorial district courts, all of whom were confirmed prior to the 110th Congress. Judges on those courts are appointed to renewable 10-year terms. There have been no nominations to the territorial district courts in the 110th Congress.

Table 7 places the judicial nominee numbers of the George W. Bush presidency in the context of the last five Presidents. Comparison of the nominee statistics of the two-term Presidents in this group (Reagan, Clinton, and George W. Bush) reveal the following. The percentages of George W. Bush's nominees confirmed to the circuit courts and district courts (72.0% and 89.9%, respectively, as of May 28, 2008) are relatively close to the confirmation percentages for the Clinton nominees (72.2% for circuit courts and 87.1% for district courts), but well below those for Reagan nominees (88.3% for circuit courts and 94.8% for district courts). The number of Bush nominees confirmed to the circuit courts (59) is somewhat below the number of confirmed Clinton circuit nominees (65) and well below the number of confirmed Reagan circuit nominees (83), while the number of Bush nominees confirmed to the district courts (241) is well below the confirmed district court nominee numbers of both Presidents Clinton and Reagan (305 and 290, respectively).

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[16] Some of President Bush's nominees were nominated to a circuit or district judgeship more than once within a Congress, or nominated to the judgeship in more than one Congress. For a listing of these nominees, as well as other Presidents' nominees to the circuit and district courts whose nominations were resubmitted from 1977 through 2006, See CRS Report RL33839, *Returns and Resubmissions of Nominees to the U.S. Courts of Appeals and District Courts, 1977-2006*, by Kevin M. Scott.

Table 7. Article III U.S. District Courts and Courts of Appeals: Number of Nominees, Number Confirmed, and Percent of Nominees Confirmed, Five Most Recent Presidents

(as of May 28, 2008)

President	Court of Appeals			District Courts[a]			Total[b]		
	Confirmed	Nominees	Percent	Confirmed	Nominees	Percent	Confirmed	Nominees	Percent
Jimmy Carter	56	60	93.3%	202	218	92.7%	258	278	92.8%
Ronald Reagan	83	94	88.3%	290	306	94.8%	373	400	93.3%
George H.W. Bush	42	53	79.2%	148	191	77.5%	190	244	77.9%
Bill Clinton	65	90	72.2%	305	350	87.1%	370	440	84.1%
George W. Bush (through May 28, 2008)	59	82	72.0%	241	268	89.9%	300	350	85.7%

Source: CRS Judicial Nominations Database

Notes:

a. The district court columns of this table account only for nominees to Article III district court judgeships, and not those to territorial district courts in the U.S. Virgin Islands, Guam, and the Northern Mariana Islands. As a result, the numbers in these columns differ somewhat from the district court data presented in **Table 3** of CRS Report RL31868, *U.S. Circuit and District Court Nominations by President George W. Bush During the 107th-109th Congresses*, which account for nominees to the territorial courts.

b. Does not include nominations to the Court of International Trade (an Article III Court since 1980).

c. Through May 28, 2008.

Appendix. The Appointment Process for Nominations to Article III Judgeships

Under the Constitution of the United States, the President and the Senate share the responsibility for filling vacancies in the federal judiciary.[17] While it is the President who nominates persons to fill federal judgeships, the appointment of each nominee also requires Senate confirmation. Although not mentioned in the Constitution, the Senate Judiciary Committee also plays an important role midway in the process — after the President selects, but before the Senate as a whole considers, the nominee. It is the Judiciary Committee in the Senate that has committee jurisdiction over most federal judicial nominations — namely, those to the Supreme Court, the courts of appeals, the district courts (including the territorial district courts), the U.S. Court of International Trade, and the U.S. Court of Federal Claims.[18]

The need for the President to make a nomination to an Article III court judgeship arises when a vacancy occurs on the court, due to the death, retirement, or resignation of a judge (or when a judge announces the intention to retire or resign).[19] In considering judicial candidates for possible nomination, the President frequently receives recommendations from U.S. Senators.[20] By longstanding custom, dating back to the mid-1800s, Senators of the President's party have provided Presidents such advice, recommending candidates for judgeships situated in their states or linked by tradition to their states.[21] Also by custom, Senators not of the President's

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[17] Article II, Section 2, clause 2 of the Constitution provides that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law...."

[18] Nominations to the Court of Appeals for the Armed Forces fall within the jurisdiction of the Senate Armed Services Committee; nominations to the U.S. Tax Court fall within the Jurisdiction of the Senate Finance Committee; and nominations to the Court of Appeals for Veterans Claims fall within the jurisdiction of the Senate Veterans' Affairs Committee.

[19] A vacancy also would occur if a judge were removed by Congress through the impeachment process, but historically such occurrences have been extremely rare. Specifically, in our nation's history, "there have been 15 impeachment trials in the Senate, 11 against judges. Seven trials have resulted in convictions, all against judges." CRS Report RL32935, *Congressional Oversight of Judges and Justices*, by Elizabeth B. Bazan and Morton Rosenberg.

[20] See CRS Report RL34405, *Role of Home State Senators in the Selection of Lower Federal Court Judges*, by Denis Steven Rutkus.

[21] A scholar on the Senate's role in judicial appointments, writing in 1953, described the "well-established custom, which has prevailed since about 1840," wherein U.S. district judges "are normally selected by senators from the state in which the district is situated, provided they belong to the same party as the President." By contrast, the President was said to have "a much freer hand in the selection of judges to the circuit courts of appeals, whose districts cover several states...." Joseph P. Harris, *The Advice and Consent of the Senate* (Berkeley, CA: University of California Press, 1953; reprint, New York: Greenwood Press, 1968), p. 314, (page citations are to the reprint edition). See also, for more recent

(continued...)

party play a consultative role and may convey to the President their views about candidates under consideration for judgeships in their states.[22] The judgeships for which a Senator ordinarily recommends nominees, or is consulted, are those in the U.S. district court or courts which geographically fall within the Senator's state and the U.S. court of appeals circuit of which the Senator's state is a geographic part — provided the circuit judgeship historically has been associated with the Senator's state.[23]

After selecting someone to fill a judicial vacancy, the President formally submits a nomination in writing to the Senate.[24] Usually on the same day it is received by the Senate, the nomination is referred to the Judiciary Committee. The committee's first formal public step is to hold a hearing on a nomination. The committee subsequently meets again to vote on whether to report the nomination to the full Senate. A committee vote to report (even a vote to report with an unfavorable recommendation) sends the nomination forward to be considered by the Senate as a whole, while a vote against reporting (historically, a very rare occurrence) prevents the nomination from going forward, and in effect defeats the nomination in committee. The next step in the appointment process occurs when the Senate votes to confirm or disapprove the nomination. A vote to confirm requires a simple majority of Senators present and voting.

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[21] (...continued)
discussion of the continuing role played by Senators in recommending judicial candidates, Sheldon Goldman, *Picking Federal Judges: Lower Court Selection from Roosevelt Through Reagan* (New Haven, CT: Yale University Press, 1997) (in each presidency chapter, under the heading "Senators and Selection").

[22] See CRS Report RL32013, *The History of the Blue Slip in the Senate Committee on the Judiciary, 1917-Present*, by Mitchel A. Sollenberger. See also Elliot E. Slotnick, "A Historical Perspective on Federal Judicial Selection," *Judicature*, vol. 86, July-August 2002, where, at p. 13, the author observes that the blue slip procedure of the Senate Judiciary Committee "has worked to ensure that home state senators of both parties, whether or not they are of the president's party, have some say when judges are being nominated from their state."

[23] A President is generally believed inclined to avoid selecting a judicial nominee opposed by a home-state Senator of the President's party — given the custom of "senatorial courtesy," wherein the Senate, as a collegial body, customarily supports Senators in disputes with the President over judicial appointments in their state. Two scholars have written that, as a result of this custom, Senators of the President's party "who object to a district judgeship in their home state have a virtual veto over the nomination." Robert A. Carp and Ronald Stidham, *Judicial Process in America*, 3d ed. (Washington: CQ Press, 1996), p. 247.

[24] For a detailed examination of the procedures followed by Senate committees and the full Senate in considering nominations in general, see CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki. For a diagrammatic overview of procedures followed by the Senate Judiciary Committee and the full Senate in considering district and circuit court nominations, see CRS Report RS21735, *U.S. District and Circuit Court Nominations: A Diagram of Customary Procedures*, by Mitchel A. Sollenberger.

If the Senate votes to confirm the nomination, the Secretary of the Senate then attests to a resolution of confirmation and transmits it to the White House.[25] In turn, the President signs a document, called a commission, officially appointing the individual to the court. The signed commission is then "returned to the Justice Department for engraving the date of appointment (determined by the actual day the president signs the commission) and for the signature of the attorney general and the placing of the Justice Department seal."[26] Once the President has signed the commission, the incoming judge is eligible to be sworn into office. The new judge actually takes two oaths of office — a judicial oath, as required by the Judiciary Act of 1789, and a constitutional oath, which, as required by Article VI of the Constitution, is administered to Members of Congress and all executive and judicial officers.

As with nominations in general, judicial nominations sometimes fail to advance through each procedural step in the appointment process. After referral to committee, a nomination might not receive a hearing or, after receiving a hearing, might not receive a committee vote on whether it should be reported. Even if favorably reported by committee, a nomination might not receive a vote by the Senate on whether to confirm. The majority leader might not schedule a vote, or some Senators might oppose taking such a vote and a "super-majority" of three-fifths of the full membership of the Senate would be needed to invoke cloture on the nomination.[27] If a nomination fails to receive a Senate vote on confirmation, it ultimately will be either withdrawn by the President or returned to the President by the Secretary of the Senate upon a Senate adjournment or recess of more than 30 days.[28] The Senate may, by unanimous consent, carry nominations over a recess of more than 30 days.

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[25] If, on the other hand, the Senate votes in the negative on whether to confirm, the nomination is defeated, and a resolution of disapproval is forwarded to the President.

[26] Sheldon Goldman, *Picking Federal Judges: Lower Court Selection from Roosevelt Through Reagan* (New Haven, CT: Yale University Press, 1997), p. 12.

[27] See CRS Report RL32878, *Cloture Attempts on Nominations*, by Richard S. Beth and Betsy Palmer.

[28] Rule XXXI, paragraph 6, *Standing Rules of the Senate*, provides, in part, that "if the Senate shall adjourn or take a recess for more than thirty days, all nominations pending and not finally acted upon at the time of taking such adjournment or recess shall be returned by the Secretary to the President and shall not again be considered unless they shall again be made to the Senate by the President."