



## The State of the Judiciary

*As President Bush enters the last months of his presidency, it is important to assess his most lasting domestic legacy: the stacking of the federal bench with men and women who will carry out his administration's ideological agenda and affect the state of our union for decades to come. Few policies epitomize the take-no-prisoners, ideologically-driven agenda of George W. Bush's administration more than its judicial selection program.*

### A Lasting Legacy

*Nine out of thirteen circuits are majority Republican-appointed and two more are evenly divided. President Bush has appointed nearly 300 judges to the federal courts, including 57 court of appeals judges and two Supreme Court justices. Many of these judges will likely serve for decades on the federal bench, shaping the law for a generation to come.*

### Judiciary by Party of Nominating President: Now vs. End of Clinton Administration\*

| Party                            | Supreme Court Justices | Court of Appeals Judges | Percent Appeals Court Judges | District Court Judges | Percent District Court Judges | Total Judges | Percent Total Judges |
|----------------------------------|------------------------|-------------------------|------------------------------|-----------------------|-------------------------------|--------------|----------------------|
| Today                            |                        |                         |                              |                       |                               |              |                      |
| Democrat                         | 2                      | 65                      | 40.4%                        | 278                   | 43.6%                         | 344          | 42.6%                |
| Republican                       | 7                      | 96                      | 59.6%                        | 360                   | 56.4%                         | 463          | 57.4%                |
| At end of Clinton administration |                        |                         |                              |                       |                               |              |                      |
| Democrat                         | 2                      | 77                      | 50.3%                        | 340                   | 54.8%                         | 419          | 53.6%                |
| Republican                       | 7                      | 76                      | 49.7%                        | 280                   | 45.2%                         | 363          | 46.4%                |

### Composition of Circuits by Nominating President\*

| Circuit      | Total Seats | Republican | Democrat  | Vacancies | % Republican |
|--------------|-------------|------------|-----------|-----------|--------------|
| First        | 6           | 3          | 2         | 1         | 60%          |
| Second       | 13          | 6          | 7         | 0         | 46%          |
| Third        | 14          | 6          | 6         | 2         | 50%          |
| Fourth       | 15          | 5          | 5         | 5         | 50%          |
| Fifth        | 17          | 12         | 4         | 1         | 75%          |
| Sixth        | 16          | 8          | 6         | 2         | 57%          |
| Seventh      | 11          | 8          | 3         | 0         | 73%          |
| Eighth       | 11          | 9          | 2         | 0         | 82%          |
| Ninth        | 28          | 11         | 16        | 1         | 41%          |
| Tenth        | 12          | 8          | 4         | 0         | 67%          |
| Eleventh     | 12          | 7          | 5         | 0         | 58%          |
| D.C.         | 12          | 7          | 3         | 2         | 70%          |
| Federal      | 12          | 8          | 4         | 0         | 67%          |
| <b>Total</b> | <b>179</b>  | <b>96</b>  | <b>65</b> | <b>14</b> | <b>59%</b>   |

Since 2007, when Democrats became the majority party, the Senate has confirmed 40 nominees, which, as the *Los Angeles Times* recently noted, is “more than in the previous three years when Republicans held the majority.”

### **Spurning Bipartisanship**

*President Bush has persisted in ignoring the advice of senators from both parties, particularly when that advice does not further the right-wing trajectory of the federal courts. Instead, he has adopted a course of confrontation, divisiveness and unilateralism designed to galvanize his ultraconservative constituency.*

Virginia Senators John Warner (R) and James Webb (D) conducted an extensive bipartisan effort to identify qualified nominees to a Virginia seat vacancy on the Fourth Circuit. The White House ignored the submitted names in favor of controversial nominee E. Duncan Getchell. (In the face of widespread Senate opposition, Mr. Getchell’s nomination was withdrawn.)

President Bush reportedly rejected a potential nominee to the Third Circuit supported by Judiciary Committee Ranking Member Arlen Specter (R-PA) because the nominee’s husband is a registered Democrat (*The Legal Intelligencer*, October 12, 2007). In contrast, President Clinton often consulted with Senator Orrin Hatch (R-UT) before submitting judicial nominations to the Senate.

### **Flouting Precedent, Shifting the Law**

*President Bush’s appointees to the Supreme Court have demonstrated their willingness to jettison established precedent and legal procedure when it stands in the way of advancing their ultraconservative agenda.*

Despite the fealty to *Brown v. Board of Education* sworn by Chief Justice Roberts and Justice Alito during their confirmation hearings, they overturned decades of precedent to end local school districts’ voluntary integration programs. The decision prompted Justice Stephen Breyer to observe that, “It is not often in the law that so few have so quickly changed so much.”

Bush appointee Justice Samuel Alito authored the opinion denying Alabama worker Lilly Ledbetter fair pay. The Court’s ruling ignored the precedent established in *Bazemore v. Friday*, a unanimous Supreme Court decision recognizing that each paycheck is a separate discriminatory act.

Increasingly, ultraconservatives on the bench are granting summary judgment against plaintiffs in worker, consumer and civil rights cases and overturning jury verdicts that favor those same plaintiffs.

### **Looking Ahead**

*President Bush has nominated a new slate of controversial nominees. It is not too late for the Senate to fully exercise its constitutional role of advice and consent and refuse to let President Bush further stack the federal bench in final year of his lame duck presidency.*

We are now in President Bush’s last year in office. In his judicial nominations, he has flouted the traditional spirit of bipartisanship that should mark that final year. The Senate should not be a pawn in his political exploitation of judicial nominations. It should insist that judicial nominees have a commitment to equal justice for all and strong bipartisan support.

*Pending controversial nominees include:*

Robert Conrad, Fourth Circuit: Conrad has never ruled for a plaintiff in an employment discrimination case. He referred to the writings of Sister Helen Prejean as “liberal drivel” and to Sister Helen herself as a “Church-hating nun.”

Steve Matthews, Fourth Circuit: Matthews served on the board of the Landmark Legal Foundation at the time that it nominated Rush Limbaugh for the Nobel Peace Prize.

Richard Honaker, District of Wyoming: Honaker’s public statements demonstrate that he believes that the law should reflect the doctrines of the Bible and Christianity.

*\*All data current as of 12:00pm ET, April 10, 2008*