JUDICIAL NOMINATIONS – A LOOK AHEAD

A major achievement of the Biden-Harris administration has been nominating, and the Senate confirming, diverse, qualified federal judges. Of the administration’s 136 Article III confirmations:

- 67% have been women
- 67% have been people of color
- 44% have been women of color
- In stark contrast, of the previous administration’s 234 Article III confirmations:
  - 84% were male
  - 76% were white

So far, President Biden’s pace of judicial nominations has been impressive. As of June 28 of its third year, the Biden-Harris administration has had 136 Article III confirmations, compared to the previous administration, which was only at 123.

<table>
<thead>
<tr>
<th>President Biden = 136</th>
<th>Former President Trump = 123</th>
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<tbody>
<tr>
<td>1 Supreme Court justice</td>
<td>2 Supreme Court justices</td>
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<tr>
<td>35 circuit court judges</td>
<td>41 circuit court judges</td>
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<tr>
<td>100 district court judges</td>
<td>80 district court judges</td>
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However, without a continued prioritization of judicial nominations, the current administration is set to fall behind its predecessor and may never catch up.

- By the end of its third year, the previous administration was at 187 Article III confirmations.
- Even if the 31 announced Article III nominees are all confirmed, that will only bring the Biden-Harris administration up to 167 confirmations.

At a minimum, the White House must announce, and the Senate must confirm, at least 20 more Article III nominees this year to even have a chance to tie the previous administration. Currently, the Senate is scheduled to have just 16 more work weeks before the end of 2023. With that existing calendar, the Senate would need to confirm on average over three nominees a week, every work week.

The Senate needs to expand its calendar: The Senate majority cannot extend the 118th Congress, but it can effectively create more time. The Senate majority leader controls when the Senate is in session. Senator Chuck Schumer should expand the Senate calendar by:

- Scrapping this August’s recess, as then-Majority Leader McConnell did in 2018 to focus on confirming judges.
• Having the Senate in session a minimum of five days per week.
• Plan now to use next year’s lame duck session to maximize judicial confirmations, regardless of election results.

In addition to expanding the calendar, the Senate majority should streamline the judicial confirmation process by reducing opportunities for obstruction:
• Eliminate what remains of the blue slip tradition.
• Reduce post-cloture debate time for circuit court nominees from 30 to 2 hours, akin to district court nominees.
• Allow the Senate to consider multiple nominees simultaneously.

In a divided Congress, confirming diverse, qualified judges is one of the most impactful things this Senate can be doing, and with their life-tenure, judges could be one of the most enduring legacies of the Biden-Harris administration.

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For media inquiries, including to interview ACS President Russ Feingold about judicial nominations, contact ACS Communications Director Nancy Rodriguez (NRodriguez@acslaw.org).