



April 17, 2002

## Senator McConnell Asks . . .

# Where Are the Judges?

*Senator Mitch McConnell (R-KY) made two important speeches on the floor of the United States Senate on April 11 and April 16, 2002. His first speech addressed the slow pace of judicial confirmations generally, and in his second speech he spoke to the approaching crisis in the U.S. Court of Appeals for the 6<sup>th</sup> Circuit. In the versions below, his remarks have been much shortened and edited.*

## Senate's Dilatory Record on Judges

"My friends on the other side of the aisle have defended the slow pace of the judicial confirmation process by saying their treatment of President Bush's nominees compares favorably with precedents. I had the Congressional Research Service look into this, and their research shows this is clearly not the case. This Congress's treatment of President Bush's nominees compares quite poorly, at all stages of the confirmation process, with the treatment that prior Congresses afforded the judicial nominees of his four predecessors during their first Congress. The record for circuit court nominees is particularly bad:

- "From Jimmy Carter through Bill Clinton, over 90 percent of the circuit court nominees were given a **hearing** by the Judiciary Committee during that President's first Congress. Now, in the second year of President Bush's presidency, only 10 of his 29 circuit court nominees have received a hearing, or 34.5 percent.
- "During the same years and during a President's first Congress, at least 86 percent of circuit court nominees were **voted on** by the Judiciary Committee. So far in this presidency, only 27.6 percent – 8 out of 29 – have been voted on.
- "With respect to **floor votes**, at least 86 percent of circuit court nominees got a vote – that is until the presidency of George W. Bush. To this point, only 24.1 percent of the nominees to the circuit courts have had a Senate vote (7 of 29).

"This is a very poor record that begins to become a national issue. At the rate this is going, I

think it will be discussed all across our country in the course of the Senate elections this fall. It is pretty clear that we are not doing a good job of filling vacancies.”

## The Crisis in the 6<sup>th</sup> Circuit

“We are facing a vacancy crisis in the federal courts. More than 11 percent of all federal judgeships are vacant, and the crisis is even worse at the appellate level, where almost one out of every five seats is empty.

“The problem is acute in the Sixth Circuit Court of Appeals where there is an astounding 50 percent vacancy rate. What does that mean for the people of Michigan, Ohio, Kentucky and Tennessee?

“To begin with, each judge is having to dispose of many more cases. According to the Administrative Office of the U.S. Courts, the average number of cases that active-status judges on the Sixth Circuit are handling has increased by 46 percent in the last five years. This results in a dramatic increase in the length of time for getting an appellate decision. In fact, the Sixth Circuit is ranked next-to-last among all federal circuits in median time for disposition of an appeal. And it’s not just that the Sixth Circuit is next-to-last – someone has to be next-to-last – but that the deviation from the national average is so big. Last year, when there were eight vacancies, the Sixth Circuit was almost four and one-half months slower than the national average, which means that the circuit was 40 percent below average.

“If you are in another circuit and you file your appeal at the beginning of the New Year, you get your decision by about Halloween. In the Sixth Circuit, an appeal filed at the same time will not be resolved until Easter of the following year.

“The purpose of my discussion is not to point fingers or lay blame, but simply to underscore the problem facing my constituents in Kentucky and the citizens in the other states in the Sixth Circuit.

“The President has nominated outstanding individuals to fill seven of the eight vacancies on the Sixth Circuit. Yet, unfortunately, no hearings have been scheduled for any of these seven nominees, even though two of those nominees (Jeffrey Sutton and Deborah Cook, both from Ohio) have been before the Senate for almost a full year (343 days).

“John Rogers, from the Commonwealth of Kentucky, has been waiting for 119 days.

“Henry Saad, Susan Neilson, and David McKeague, all from Michigan, have now been waiting for 160 days.

“The Sixth Circuit is in dire need of the services of fine lawyers, and I hope the Senate can make some reasonable progress on accommodating that court’s urgent needs.”

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Note: The numbers of judicial confirmations and days pending that are used in the text were accurate

when Senator McConnell spoke. Obviously, those numbers will change over time.