



January 31, 2003

Judiciary Committee Acts to Fill Nation's Courts

The Judiciary Committee this week took important steps to address the judicial vacancy crisis in our nation's courts. The U.S. Courts of Appeals are currently 15 percent vacant even as case filings in those courts reached an all-time high in 2002. Chief Justice Rehnquist has warned that this vacancy level, coupled with the rising caseload, threatens the proper functioning of the federal courts. Currently pending are 14 court of appeals nominees, 12 of whom were nominated in 2001 and have been waiting over a year for Senate votes. The Judiciary Committee's actions this week are the beginning of an effort to clear this backlog and to ensure that the courts have a full complement of judges.

Judiciary Committee Confirms Miguel Estrada Along Party Lines

On January 30, the Judiciary Committee voted 10-9 to confirm Miguel Estrada to serve on the U.S. Court of Appeals for the District of Columbia. Mr. Estrada is widely regarded as one of the nation's best appellate lawyers, having argued 15 cases before the Supreme Court, and serving as Assistant Solicitor General under Presidents George H.W. Bush and Bill Clinton. Mr. Estrada is a partner at Gibson, Dunn & Crutcher where he has represented a wide variety of clients, including a Virginia death row inmate. The American Bar Association has *unanimously* concluded that Mr. Roberts is "well qualified" – its highest rating – which Democrats have touted as the "gold standard." Prominent Democrats such as Seth Waxman, President Clinton's Solicitor General, and Ron Klain, Vice President Gore's attorney during the Florida recount, have hailed Mr. Estrada as a man of great professionalism and integrity.

Moreover, Mr. Estrada's personal achievements represent a great American success story. After immigrating from Honduras at age 17, Mr. Estrada graduated Phi Beta Kappa from Columbia College and *magna cum laude* from Harvard Law School. He will be the first Hispanic on this important court. His nomination is supported by the U.S. Hispanic Chamber of Commerce, the Hispanic National Bar Association, and the League of United Latin American Citizens, the nation's oldest and largest Hispanic civil rights organization.

In attempting to justify their party-line vote against Mr. Estrada, Democrats did not claim that he was unqualified or that he would not fulfill his constitutional duties. Instead, they claimed that Mr. Estrada was not forthcoming during his confirmation hearing because he prudently declined to discuss his views of legal issues that he might be required to rule upon. Some also purported to rely upon allegations by a former supervisor that Estrada was an

“ideologue,” even though that supervisor in the Solicitor General’s office had rated Mr. Estrada’s work as outstanding and Solicitor Waxman had praised his work as a “model of professionalism and competence.”

The Democrats’ partisan vote against Mr. Estrada was plainly not based upon his qualifications or his character. Do they fear that he will employ his considerable intellect and fair-mindedness to enforce the Constitution and the nation’s laws – rather than legislate from the bench to serve liberal ends?

A Look at the Other Nominees

Jeffrey Sutton for the Sixth Circuit

Mr. Sutton has been nominated to the U.S. Court of Appeals for the Sixth Circuit, which includes Michigan, Ohio, Kentucky, and Tennessee. He is widely regarded as one of the nation’s most accomplished appellate lawyers, having argued a dozen cases in the Supreme Court and serving as the State of Ohio’s chief appellate attorney. He has represented a wide array of clients, including a blind woman who was denied admission to a state-run medical school, two capital inmates, and a prisoner who brought a civil rights lawsuit in the Supreme Court. President Clinton’s Solicitor General, Seth Waxman, has written that Mr. Sutton is “both a gifted appellate advocate and a fine human being.”

Some liberal interest groups have attacked Mr. Sutton because of the legal arguments he made on behalf of his clients. Such attacks are meritless. Like any attorney, Mr. Sutton has a legal obligation to make all available arguments on behalf of his clients. To challenge him personally for those arguments is antithetical to our system of justice. There has been *no* allegation that Mr. Sutton is not an outstanding attorney fully qualified for the bench.

Deborah Cook for the Sixth Circuit

Also nominated to the Sixth Circuit, Justice Cook has served on the Ohio Supreme Court since 1994 after serving four years on a state appellate court, deciding more than 1,000 cases during her tenure. She came to the bench after working for 15 years in Akron’s oldest law firm where she was the first woman attorney the firm ever hired and the firm’s first woman partner. In addition to her distinguished judicial service, Justice Cook has been a leader in the Akron-area United Way and has established and – along with her husband – personally funded a scholarship program for needy children.

Justice Cook’s nomination has been challenged by liberal interest groups because of her willingness to dissent from the Ohio Supreme Court’s judicial activism. Justice Cook’s opinions are well within the mainstream of legal thought, however, and will well-serve the court and the parties that come before it.

John Roberts for the D.C. Circuit

John Roberts is one of the nation's most respected and successful appellate advocates, having argued 38 cases before the U.S. Supreme Court while representing clients urging positions from across the political spectrum. The American Bar Association has unanimously concluded that Mr. Roberts is "well qualified" for this judgeship, and he has strong bipartisan support from prominent Democrats such as Lloyd Cutler, President Clinton's White House Counsel, and Seth Waxman, the former Solicitor General. More than 150 members of the District of Columbia Bar from across the political spectrum have urged Mr. Roberts's confirmation, praising his "unquestioned integrity and fair-mindedness." During the confirmation hearings, no Senators challenged Mr. Roberts's qualifications or fair-mindedness. Nevertheless, Democrats nonetheless may attempt to block this nomination in order to prevent President Bush from filling this vacancy.

Prepared by RPC Judiciary Analyst & Counsel Steven J. Duffield, 224-2946

The summary above is but an introduction to the wealth of information available regarding the pending judicial nominees. Those interested in additional information should contact the Judiciary Committee, Rena Johnson Comisac (4-5225), or Steven J. Duffield with the RPC (4-2946).