

ISSUE BRIEF

Federal Judicial Nominees

Federal courts play a pivotal role in preserving important protections for workers provided under our nation's labor and employment laws.

While most public attention is focused on nominees for the U.S. Supreme Court, federal judges at the district and appeals court levels often have the final say on cases that come up on appeal from the National Labor Relations Board (NLRB), the Occupational Safety and Health Administration (OSHA) and other key federal agencies. In considering nominees for lifetime appointments to the bench, the Senate should insist on fair and impartial individuals with mainstream views on issues of importance to working families.

According to People for the American Way, from 1995 to 2000, Republican Senators blocked 35 percent of President Clinton's nominees to the federal appellate courts in hopes of creating vacancies that could then be filled by a Republican president. That strategy paid off, as President George W. Bush is now poised to stack the courts with ultraconservative ideologues, many of whom "share a disdain for worker rights," according to the *L.A. Times*. Republican appointed judges already make up a majority on seven of the 13 circuit courts of appeals, and with the confirmation of President Bush's current nominees, Republican judges would take control of three more. It is quite possible that by 2004, Republican appointed judges will control all 13 federal appellate courts. Because federal judges are appointed for life, the impact of these appointments will last far beyond the Bush administration itself.

Working families deserve judges committed to securing the rights of workers granted to them by Congress. American workers deserve the appointment of judges who respect the balance of powers and the importance of core statutory protections. It is imperative that senators scrutinize judicial nominees for their views on the importance of maintaining national labor standards as well as the authority granted Congress by the U.S. Constitution. Nominees should have a balanced record on cases involving working families and views that fall within the mainstream of judicial thought.

Federal judges decide cases involving core rights for workers and unions. The federal courts decide numerous employment-related cases, including appeals from unfair labor practice decisions by the NLRB and suits involving collective bargaining agreements. They also hear cases brought under Title VII of the Civil Rights Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the Americans with Disabilities Act and other core workplace laws. As a result, the federal judiciary has a direct and profound impact on the lives of working people and their unions.

The U.S. Court of Appeals for the District of Columbia Circuit holds a uniquely important role among the 13 federal circuit courts. The D.C. Circuit is regarded widely as the second most important court in the United States because of its jurisdiction and its location in the nation's capital. It is the court that most closely oversees the actions of federal agencies and is typically the final word on federal agency actions. It reviews regulations adopted under the Clean Air Act by the Environmental Protection Agency, orders of the Federal Communications Commission, appeals from unfair labor practice decisions by the NLRB, challenges to regulations issued by OSHA and much more.

The current eight-member D.C. Circuit is now evenly divided between Republican and Democratic presidential appointees and has become more ideologically balanced in recent years.

That balance will be destroyed if the Senate confirms ultraconservative nominees to the current vacancies on the court. Republican senators blocked two highly qualified Clinton administration nominees to this court. Now the Bush administration has moved to fill those two seats with ultraconservative nominees and is reportedly planning to nominate two more ultraconservatives to bring the court to its 12-member capacity.