

SJR

33

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 04/7/04

FURTHER: Judiciary

Date of 5-Day Notice: 4/28/04
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4/30/04

State Affairs Committee considered SENATE JOINT RESOLUTION NO. 33

SJR 33 CONGRESSIONAL VOTE ON JUDICIAL NOMINATION

Urging our United States Senators to work to allow a timely vote on the floor on all judicial nominations.

and recommends:

- be replaced with _____ CS SJR 33 (STA)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Sea. STA	4/28/04			✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>John J. Caudle</i>	✓			
<i>Robert J. ...</i>			✓	
<i>...</i>		✓		
CHAIR: <i>[Signature]</i>	✓			

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SJR 33
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: None
 Title Congressional Vote on Judicial Nomin BRU _____
 Component _____
 Sponsor Senator Seekins
 Requester Senate State Affairs Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Senate State Affairs Committee Phone 465-4522
 Division _____ Date/Time 4/26/04 9:13 AM
 Approved by: Senator Gary Stevens, Chair Date 4/26/2004
 Agency _____



U.S. Department of Justice Office of Legal Policy

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Last Updated: 4/26/04

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Judicial Nominations

43* = Vacancies in the 877-member Article III federal judiciary.

46 = Pending Article III Nominees.

- Number of nominees may exceed number of vacancies because the President may name individuals to fill vacancies that will occur in the near future.
- [Information about judicial nominations during the 107th Congress.](#)
 - o *This figure does not take into account recess appointments.

Counter

Hits from 4/19-4/26:

743

Total hits since 7/10/01:

117679

Judicial Vacancies



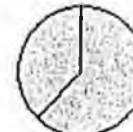
- 43 Vacant (5%)
- 832 Filled (95%)

Hearings for Nominees



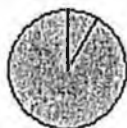
- 102 Had Hearing (84%)
- 20 No Hearing (16%)

Confirmations*



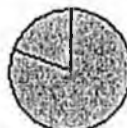
- 73 Confirmed (61%)
- 46 Not Confirmed (39%)

Circuit Vacancies



□ 16 Vacant (9%)
 □ 163 Filled (91%)

Hearings for Circuit Nominees



□ 29 Had Hearing (81%)
 □ 7 No Hearing (19%)

Circuit Confirmations**



□ 13 Confirmed (42%)
 □ 18 Not Confirmed (58%)

* These numbers only include Article III courts. The President has nominated 6 people to the Article I Court of Federal Claims, 5 of whom have been confirmed. There is also one Article I District Court nominee.

** One nominee withdrew and one nominee was recess appointed.

	Current Vacancies	Nominations Since 1/2003	Confirmations	Current Pending Nominations
Circuit	18* (of 179) — 10%	33	13	18
District	29 (of 680) — 4%	86	60	28
TOTAL	45 (of 877) — 5%	119	73	46

*This figure does not take into account recess appointments.

- Complete list of nominations.
 - Complete list of confirmed nominees.
 - Complete list of vacancies.
-
- 25 of the 46 vacancies are so-called "judicial emergency" vacancies.
 - There are 24 nominees pending against positions designated as a "judicial emergency" vacancy.
 - Complete list of "judicial emergency" vacancies.

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- Total nominations pending before the Senate:
 - 18 Circuit Court
 - 28 District Court
 - 0 International Trade Court
 - 0 Court of Federal Claims

- Nominations pending before the Senate Judiciary Committee awaiting a hearing:
 - 7 Circuit Court
 - 15 District Court
 - 0 International Trade Court
 - 0 Court of Federal Claims

- Nominations scheduled for a hearing:
 - 1 Circuit Court
 - 2 District Court
 - 0 International Trade Court
 - 0 Court of Federal Claims

- Nominations pending before the Senate Judiciary Committee awaiting a vote:
 - 4 Circuit Court
 - 5 District Court
 - 0 International Trade Court
 - 0 Court of Federal Claims

- Nominations pending before the full Senate awaiting a vote:
 - 9 Circuit Court
 - 13 District Court
 - 0 International Trade Court
 - 0 Court of Federal Claims

- Nominations confirmed by the Senate:
 - 13 Circuit Court
 - 60 District Court
 - 1 International Trade Court
 - 6 Court of Federal Claims

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- No nominations have been rejected by the Senate, one nomination has been withdrawn during the 108th Congress and one was returned at the end of the first session.

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- Blue Slips

- A blue slip is the traditional method of allowing the home state senators of a judicial nominee to express their approval or disapproval. Blue slips are generally given substantial weight by the Judiciary Committee in its consideration of a judicial nominee. The process dates back several decades and is grounded in the tradition of "senatorial courtesy," which traces its roots back to the presidency of George Washington.
- Current status of Blue Slips.

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- **In the News...**

- 5/6/03 Letter from Counsel to the President Alberto R. Gonzales to Senator Schumer Regarding the Judicial Confirmation Process

"[T]he solution to the broken judicial confirmation process is for the Senate to exercise its constitutional responsibility to vote up or down on judicial nominees within a reasonable time after nomination, no matter who is President or which party controls the Senate."

- 2/25/03 Letter from Bipartisan Majority of U.S. Senators Expressing Support for Miguel Estrada's Nomination

"Despite his obvious qualifications and remarkable personal story, we have been unable to obtain fair consideration on the Senate floor for Mr. Estrada's nomination. Nevertheless, we, the undersigned majority in the United States Senate, commend you for your outstanding choice, and will continue to work diligently to ensure Mr. Estrada receives a simple up or down vote on the Senate Floor."

- 6/24/02 Letter from former Solicitors General Regarding Chairman Leahy's Request for Deliberative Material

"Our decisionmaking process required the unbridled, open exchange of ideas - an exchange that simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure. Attorneys inevitably will hesitate before giving their honest, independent analysis if their opinions are not safeguarded from future disclosure. High-level decisionmaking requires candor, and candor in turn requires confidentiality."

- "White House Counsel Alberto Gonzales Discusses the Crisis in Our Courts"

"President Bush has responded to the vacancy crisis by nominating a record number of federal judges: 90 since taking office, almost double the nominations that any of the past six presidents submitted in the first

year. Despite his decisive action, the Senate has not done enough to meet its constitutional responsibility. It has voted on less than half of the nominees. Indeed, it has voted on only six of the 29 nominees to the courts of appeals. . . .

"As Congress returns to work, the administration respectfully calls on the Senate to make the vacancy crisis a priority and to ensure prompt hearings and votes for all nominees. The Senate should make this practice permanent, adhering to it well after President Bush leaves office, so as to ensure that every judicial nominee by a president of either party receives a prompt hearing and vote." *The Wall Street Journal, Editorial, January 25, 2002.*

- "Chief Justice Warns More Judges Need to be Confirmed"

"Chief Justice William Rehnquist has offered a timely assist to the Republican minority in the U.S. Senate, which has been accusing Democrats of dragging their feet on confirming new federal judges.

"And although the chief justice is a Republican appointee, there is nothing partisan about his plea that the Democratic-controlled Senate "act with reasonable promptness" on President Bush's judicial nominees and vote them "up or down" instead of ensaring them in procedural delays." *Pittsburgh Post Gazette, Editorial, January 3, 2002.*

- "Sixth Circuit Crisis"

"With eight openings, the 16-member court [the 6th Circuit Court of Appeals] is operating at half strength...Four of those Sixth Circuit openings have been deemed judicial emergencies by the Administrative Office of the U.S. Courts, based on the number of years a judgeship has been open and the size of the court's caseload.

"President Bush addressed this crisis with seven nominations to the Sixth Circuit last year, including two in his first batch of nominees last May 9. And the Senate? Mr. Leahy has yet to grant a single hearing for a Sixth Circuit nominee." *The Wall Street Journal, Editorial, January 3, 2002.*

- **Judicial Emergency:**

The formula by which a judicial vacancy is determined to be a "judicial emergency" has been changed by the Administrative Office of the U.S. Courts effective December 2001, to identify courts where vacancies have resulted in only one active judge.

The formula now used is:

Any vacancy in a district court where weighted filings are in excess of 600 per judgeship; **OR** any vacancy in existence more than 18 months where weighted filings are between 430 to 600 per judgeship; **OR** any court with more than one authorized judgeship and only one active judge;

AND

Any vacancy in a court of appeals where adjusted filings per panel are in excess of 700; **OR** any vacancy in existence more than 18 months where adjusted filings are between 500 to 700 per panel.

Complete list of "judicial emergency" vacancies.

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Judicial Emergencies

(See attachment for revised definition.)

April 6, 2004

Prepared by the AOUSC Office of Legislative Affairs

Court	Vacancy Created By	Reason	Vacancy Date	Da Pendi Adjusted filings*
02	CCA Parker, Fred I.	Deceased	8/12/2003	238 879
02	NY-E Johnson, Sterling Jr.	Senior	6/1/2003	310 667
02	NY-E Raggi, Reena	Elevated	9/20/2002	564 667
03	PA-E Hutton, Herbert J.	Senior	9/6/2003	213 620
03	PA-E Waldman, Jay C.	Deceased	5/30/2003	312 620
03	PA-E Buckwalter, Ronald L.	Senior	12/11/2003	117 620
03	PA-E Yohn, William H. Jr.	Senior	11/20/2003	138 620
04	CCA Murnaghan, Francis	Deceased	8/31/2000	1314 599
04	CCA Phillips, J. Dickson Jr.	Senior	7/31/1994	3537 599
04	NC-E Britt, W. Earl	Senior	12/7/1997	2312 537
04	VA-E Morgan, Henry C. Jr.	Senior	2/8/2004	58 632
05	CCA Garwood, William L.	Senior	1/23/1997	2630 1009
05	MS-S Pickering, Charles W. Sr.	Elevated	1/16/2004	81 1223
06	CCA Suhrheinrich, Richard F.	Senior	8/15/2001	965 588
06	CCA			

	Kennedy, Cornelia	Senior	3/1/1999	1863	588
06	CCA Ryan, James L.	Senior	1/1/2000	1557	588
06	CCA Keith, Damon	Senior	5/1/1995	3263	588
09	CA-S PL 107-273	New Position	7/15/2003	266	610
09	CCA Browning, James R.	Senior	9/1/2000	1313	956
09	HI Kay, Alan C.	Senior	1/1/2000	1557	431
09	WA-W Zilly, Thomas S.	Senior	1/1/2004	96	682
09	WA-W 28 USC 133 (per Barbara Rothstein, FJC Director)	FJC Director	9/8/2003	211	682
10	NM Parker, James A.	Senior	9/1/2003	218	681
11	FL-S Ferguson, Wilkie D. Jr.	Deceased	6/9/2003	302	615
Total Judicial Emergencies				24	

* A judicial emergency is defined as the following: 1) any vacancy in a district court where weighted filings are in excess of 600 per judgeship, OR any vacancy in existence more than 18 months where weighted filings are between 430 and 600 per judgeship, OR any court with more than one authorized judgeship and only one active judge; and 2) any vacancy in a court of appeals where adjusted filings per panel are in excess of 700; OR any vacancy in existence more than 18 months where adjusted filings are between 500 to 700 per panel.

ALASKA STATE SENATE



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SENATE JUDICIARY COMMITTEE

Senator Ralph Seekins, Chairman
District D

Senate Joint Resolution 33 Sponsor Statement

“Urging our United States Senators to work to allow a timely vote on the floor on all judicial nominations.”

Senate Joint Resolution 33 respectfully requests the U.S. Senate move forward with President Bush’s judicial nominations.

Our U.S. Constitution provides the President with the power to nominate qualified candidates for federal judicial positions *with* the consent of the Senate. But, many of these nominations are currently being blocked through parliamentary delay tactics carried out by a minority of senators. This has created needless hardship within the judiciary branch of our government.

In fact, the Administrative Office of the United States Courts has classified 22 judgeships as “judicial emergencies”. Many of President Bush’s nominees are intended to fill these seats. Furthermore, a majority of the United States Senate stands ready to approve these individuals. Nevertheless, they — and the judiciary branch they are to serve — remain mired in political limbo.

Senate Joint Resolution 33 requests the U.S. Senate move forward with these nominations thus allowing the judicial branch to function as the Constitution intended.