



Biden speeds ahead on installing judges

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August 8, 2021

President Biden and Senate Democrats are off to a fast start in pushing through judicial nominees, outpacing former President Trump's early record in confirming judges to the federal bench.

While many Democrats had been hoping that Supreme Court Justice Stephen Breyer would announce his retirement to allow the new White House to pick his replacement, Biden has already pushed ahead with making an early mark on the federal courts.

Nine of Biden's 33 nominees have already been confirmed, seven of whom were sworn in in the month of July alone, and another 14 are awaiting floor votes in the Senate.

Those numbers put Biden ahead of any president in the past 40 years at this point in their first year, said Russell Wheeler, a fellow with the Brookings Institution who studies judicial confirmations.

Trump had gotten off to a slower start, having five of his judges confirmed at this point in 2017, including Supreme Court Justice Neil Gorsuch just three months into his tenure. However, Trump went on to fill the judiciary with conservative appointees at a record pace.

“I think that got people's attention,” Wheeler said of Trump’s impact on the courts. “So that just fueled, it seems to me, the Biden administration's decision that it was going to do what it could to be more active than some of his Democratic predecessors.”

By early August of their first years in office, former Presidents Clinton and Obama had not managed to push any judicial confirmations through the Senate. Wheeler notes, however that, Clinton, Obama and Trump all filled Supreme Court vacancies in their first year — which often puts any other legislative business on hold.

Biden is pressing ahead with an aggressive quantity of nominees and putting an emphasis on diversifying a federal bench that has historically been lacking women, people of color and lawyers with a background in public interest.

At least 12 of the president's picks have worked as public defenders, and others have backgrounds in civil rights, labor and immigration law.

The emphasis on a new pool of candidates for judicial nominations is intended to expand the breadth of experience on a bench dominated by former prosecutors and partners at prestigious law firms that primarily represent big businesses.

According to a study published by the Cato Institute in May, just 58 out of 880 sitting federal judges are former public defenders. The study found that former prosecutors outnumber former public defenders on the federal bench at least five to one.

Biden has also emphasized demographic diversity in his judicial picks. The majority of his nominees are women, and many are from communities that have long been underrepresented in the courts.

In June, Zahid Quraishi became the first Muslim to be confirmed by the Senate for a federal district court seat. And last week, Biden announced two nominees — Beth Robinson for the 2nd Circuit Court of Appeals and Charlotte Sweeney for Colorado's federal district court — who would both be the first openly LGBT judges on their respective courts if confirmed.

“This trailblazing slate of nominees draws from the very best and brightest minds of the American legal profession,” Biden said in a statement when he announced his first round of nominees in March. “Each is deeply qualified and prepared to deliver justice faithfully under our Constitution and impartially to the American people — and together they represent the broad diversity of background, experience, and perspective that makes our nation strong.”

Trump ended his term with 234 judges appointed to lifetime tenures on the court, including a notable three Supreme Court justices. His appointees were mainly white and male, and many were drawn from the ranks of the conservative legal movement.

Progressives, for their part, have been pushing Democrats to respond to Trump's success by confirming judges at a comparable pace and with similar fervor in an effort to shape the judicial system.

That movement has included a push to pack the Supreme Court with more seats and impose structural reforms, such as term limits, in order to counteract the lopsided 6-3 conservative majority on the high court.

While Biden has voiced skepticism about court packing and other proposals, he has so far embraced the progressive push to prioritize judicial confirmations.

It's too early to tell whether Biden will be able to match Trump's success with judicial confirmations. Wheeler noted that Trump inherited numerous court vacancies when he took office in 2017 thanks to Senate Republicans blocking or otherwise stalling many nominees in the last years of the Obama administration.

"That wasn't the case with Biden, so he doesn't have as many vacancies to fill, and most of them are [left by] Democratic appointees so far," Wheeler said. "Obviously, that could change. We're really only in the top half of the first inning. We'll probably be having a different conversation a year from now."

And even if Biden manages to sustain his current pace at confirming lower court judges, it's unlikely to mollify progressive advocates who see an urgent need to reform the nation's highest court.

"We are thrilled to support many of President Biden's lower court nominees, but nothing about that support is distracting from our work to build the movement to expand the Supreme Court," Christopher Kang, a co-founder of the progressive group Demand Justice and a former deputy counsel in the Obama White House, said in a statement to The Hill.

"President Biden's lower court nominees are shifting the paradigm on professional diversity, but without Supreme Court expansion our judiciary will remain in the hands of six Republican justices who consistently rule in favor of partisan and corporate interests," Kang said.