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Obama getting fewer judges confirmed than Nixon

By MARK SHERMAN (AP) – 10 hours ago

WASHINGTON — A determined Republican stall campaign in the Senate has sidetracked so many of the men and women nominated by President Barack Obama for judgeships that he has put fewer people on the bench than any president since Richard Nixon at a similar point in his first term 40 years ago.

The delaying tactics have proved so successful, despite the Democrats' substantial Senate majority, that fewer than half of Obama's nominees have been confirmed and 102 out of 854 judgeships are vacant.

Forty-seven of those vacancies have been labeled emergencies by the judiciary because of heavy caseloads.

Even some Republican senators have complained. Sen. Lamar Alexander took to the Senate floor in July to plead with his own leaders for a vote on an appeals court judge supported by Alexander and fellow Tennessee Republican Sen. Bob Corker.

With Congress returning Sept. 13 for a session shortened by members' desire to campaign for re-election in November, there's little time to reverse the trend. Some say there's little chance of reversing it as polls show a rising chance the GOP will capture the Senate, which could stiffen GOP resistance to confirmation votes.

The Obama administration got a slow start sending names to the Senate last year and has yet to try to fill two vacancies on the high-profile federal appeals court in the District of Columbia, where four current Supreme Court justices once served.

Obama has voiced only tepid public objection as more and more of his judicial nominees become stranded in Senate limbo, and Senate Majority Leader Harry Reid has been unwilling to set aside the considerable time needed to force votes under complex Senate rules.

Now there are 45 nominees awaiting action, two for nearly 13 months. After Alexander's complaint, the Republicans agreed to allow a mid-September vote for appeals court nominee Jane Stranch, first nominated by Obama in August 2009.

At this point in President George W. Bush's first term, 72 judges had been confirmed by a Senate that Democrats controlled for much of Bush's first two years. By contrast, the Senate has had 59 or 60 seats under Democratic control during Obama's tenure but has only confirmed 40 of his judges. Nixon got 33 judges through a Democratic-controlled Senate.

"What's interesting is you got a guy (Bush) who was barely elected president with a Senate in the hands of the opposing party, and he is going to come out better in his first two years than a guy who got elected with a big majority and had a big majority in the Senate too," said Brookings Institution scholar Russell Wheeler.

White House counsel Bob Bauer and progressive groups squarely blame Republicans.

The Senate GOP is obstructing "confirmations across the board, even forcing noncontroversial nominees who passed committee with overwhelming bipartisan support to wait months for a floor vote," Bauer said.

Marge Baker, executive vice president of the liberal People for the American Way, said that stalling votes on judges is "part and parcel of the general obstruction we're seeing right now."

Senate Republican leader Mitch McConnell of Kentucky has acknowledged that his strategy is partly payback for Democrats' blocking some Bush appointees.

But McConnell spokesman Don Stewart said the responsibility for the lack of confirmations lies with Obama, who nominated just 33 people to judgeships in 2009, and Reid, who controls the Senate calendar.

"We can't confirm what's not there," Stewart said.

But Republican senators have forced postponements of hearings and votes in the Judiciary Committee and used their power under the chamber's rules to block any easy route to full Senate votes.

Persistent resistance by the opposition to a president's appeals court nominees reaches back to President Bill Clinton's administration and a Senate controlled by Republicans for six of Clinton's eight years.

Wheeler said the Republicans now are delaying votes on district court nominees, too. And in one instance, Republicans for months even blocked confirmation of openly gay Marisa Demeo to be a local trial judge in the nation's capital. The Senate confirms local judges because the city is a federal enclave.

Republican objections to Obama's nominees, however, are not primarily rooted in the candidates' ideology. With a couple of exceptions, the president has nominated moderates who receive

AP Associated Press

Map



overwhelming, sometimes unanimous, support once they get a vote.

The Obama nominees so far have not excited progressive groups that once hoped a Democratic administration combined with a large Democratic Senate majority would remake the federal courts.

When Bush left office, Republicans had appointed just under 60 percent of all federal judges. Twenty months later, the number has dipped only slightly to a shade under 59 percent, according to statistics compiled by the liberal Alliance for Justice. Because of retirements, the percentage of Republican-nominated district judges actually has gone up.

The president has had some successes, notably changing the composition of the 4th U.S. Circuit Court of Appeals in Richmond, Va., which had been dominated by conservatives chosen by Republican presidents.

His nominees also have been diverse: Just under half are women, one-quarter are African-American, 12 percent are Asian-American and 7 percent are Hispanic.

Obama also filled two Supreme Court vacancies. The confirmations of Justices Sonia Sotomayor and Elena Kagan took considerable time, although they do not completely explain the initially slow rollout of judicial nominees.

Even now, Obama has nominated roughly 40 fewer people for judgeships than either Bush or Clinton at this point.

The smaller number of nominees has been a surprise because Obama once taught constitutional law and installed a team with vast experience nominating and confirming judges.

"It seems like it has not been a priority," said Ilya Shapiro, senior fellow at the libertarian Cato Institute in Washington. "It's been surprising because he's a constitutional lawyer, he knows how courts work, how important they are. It seemed like an easy bone to throw to his base to make a mark, a lasting mark."

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