



June 19, 2012

The “Leahy Rule” on Judges

Democrat Leader Harry Reid insisted four years ago that confirming judicial nominees during a presidential election year “[is always very tough](#),” and that by June, “we will have to take a real [close look](#)” at further judicial confirmations. Judiciary Committee Chairman Pat Leahy [made it clear](#) on June 12th of that year that it was already “way past the time” when judges would be confirmed. Senators Reid and Leahy made good on their threats to stop confirming judges in June – no other circuit court judges were confirmed in 2008.

Now, with President Obama appointing judges, there has been no suggestion by Senate Democrats that they will follow past practice any time soon.

Republicans have treated President Obama’s nominees to the federal judiciary [fairly](#). With last week’s [confirmation](#) of Andrew Hurwitz to the Court of Appeals for the Ninth Circuit, the Senate this year has already confirmed five of President Obama’s circuit court nominees. Comparatively, the Senate confirmed the same number of President Bush’s circuit court nominees in 2004 and confirmed four circuit court nominees in 2008. And unlike President Obama, President Bush never made unconstitutional “recess” appointments when the Senate was in session.

Election Year	Last Circuit Confirmation	Total Circuit Confirmations
2004	June	5
2008	June	4
2012	June	5 <i>(as of June 19)</i>

The “Thurmond Rule” Is a Misnomer; It Should Be the “Leahy Rule”

Senators Reid and Leahy have claimed the “rule” of slowing down judicial confirmations in presidential election years had been used in the past by Senator Strom Thurmond, and they dubbed it the “Thurmond Rule.” According to the [Congressional Research Service](#), the Senator

who has “most frequently asserted the existence of a Thurmond rule” is the current Chairman of the Senate Judiciary Committee – Senator Leahy.

Senate Democrats [filibustered four circuit court](#) nominees in July of 2004. During the debate on these nominations, Senator Leahy [cited the “Thurmond Rule”](#) as part of the justification for filibustering them. Then again in 2008, Chairman Leahy refused to process altogether several outstanding circuit court nominees. These include nominees to the Fourth Circuit, which was more than 25 percent vacant:

- Judge Robert Conrad (who was previously commended by Clinton Attorney General Janet Reno for his work as a federal prosecutor and confirmed unanimously as a U.S. Attorney and a U.S. district judge);
- Judge Glen Conrad (who had bipartisan home state support);
- Steve Matthews (who had home-state support);
- U.S. Attorney Rod Rosenstein (whom Democrats refused to confirm because, they asserted, he was doing [too good of a job](#) as U.S. Attorney to be promoted. Mr. Rosenstein continues to serve as U.S. Attorney and was recently selected to investigate the leak of national security information.)

President Obama has since filled all these vacancies.

Different Standard for Obama’s Nominees

Senate Democrats have been the most vigorous proponents of a custom of limiting the number of lower court confirmations in the months before presidential elections. They should be held to the same standard to which they held the judicial nominees of a Republican President.

The silence of Senate Democrats this year comes as no surprise. In 2000, Senators Leahy and Reid both insisted that a Senate rule requiring a slow-down on judicial confirmations was a “myth.” That was during the waning months of the Clinton presidency. In short, they want a one-way rule to prevent the confirmation of Republican nominees.

With the presidential election just a few months away, the Senate should not have a different standard for these important lifetime positions.