



To: Interested parties
From: Tyler Cooper, Fix the Court senior researcher
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Re: Reforming the judicial confirmation process

Neither Republicans nor Democrats are pleased with the process of nominating and confirming U.S. district and appellate judges, not to mention Supreme Court justices. Blue slips are essentially dead, and though there is often little reason for most district nominees not to garner a supermajority's worth of support, there is often still a holdup. And there are no protocols in place to vet the veracity – or mendacity – of a last-minute claim against a nominee's character.

Below we take a look at ways to reduce partisanship and polarization of the confirmation process through a set of rules and norms we would hope to see implemented in due course.

1. Increase the budget for Senate Judiciary staff

The fix: Increase the budget for those vetting judicial nominees – i.e., the majority and minority staffs of the Senate Judiciary Committee – would allow the committee to hire more people to do the work.

How it helps: A compelling case can be made for increasing the budget for all congressional offices, but those on this committee have the additional responsibility, beyond drafting legislation and conducting hearings, of vetting and confirming lifetime appointments to the federal judiciary, which has seen the number of authorized judgeships increase from 253 in 1945 to 870 today.

The seriousness of this task is undermined by the lack of resources provided to those who carry it out. Additional appropriations could allow for the hiring more staff plus more competitive compensation packages to attract and retain top talent.

Though the number of judicial vacancies has been consistently high for years, the Judiciary Committee has seen its staff numbers drop by more than 15 percent from 2001 to 2016, according to a [report](#) released this month by the R Street Institute.

Relatedly, Congress should consider increasing the budget for the federal judiciary's Committee on Financial Disclosure, which is tasked with assisting judicial nominees with filling out initial disclosure reports and has lost about half of its staff over the last decade.

2. Mandate deadlines for Supreme Court nominations: a variation of Bush's 2002 proposal

The fix: In a [speech](#) given on Oct. 30, 2002, President Bush proposed a series of timetables to regulate judiciary nominations and confirmations. We agree that a timeframe should be put in place for Supreme

Court nominations – i.e., say the Judiciary Committee would hold a hearing for a Supreme Court nominee within 90 days of a nomination, and the full Senate would vote within 180 days of a nomination.

How it helps: This proposal leaves plenty of time both to hold a hearing (three months) and a full Senate vote (six months). It does not require the Senate confirm a nominee; it only requires that the Senate consider a nominee in full view of the public.

In the same speech, President Bush also proposed that federal judges give a year’s notice of their retirement or taking of senior status. Though knowing ahead of time when a vacancy will occur would be beneficial to the political branches, we do not see that as the top priority here.

3. Create judicial nominating commissions for vacancies and mandate deadlines: a variation of Schumer’s 2003 proposal

The fix: First, establish bipartisan judicial nominating commissions in every state, the District of Columbia and every Circuit Court of Appeals, each comprising an equal number of Republicans and Democrats, chosen by the sitting President and the opposition party’s Senate leader. This is based on a 2003 [proposal](#) made by Sen. Schumer.

Second, upon a new vacancy at the district or the appellate level, the corresponding judicial nominating commission would have a finite amount of time to propose a nominee, say 30 or 45 days; the President would have a finite amount of time to then nominate the individual, also 30 or 45 days; and the Senate would have a reasonable timeframe within which to confirm him or her, say 90 days.

How it helps: The current gridlock over nominees to the federal bench is due in large part to completely rational short-term calculations made by increasingly polarized political parties, but it serves neither party’s long-term interest to turn the judiciary into another combative partisan institution. There is value to both sides in a judiciary that leaves the policymaking to the other two branches rather than becoming one that seeks to advance a competing agenda of its own.

This proposal acknowledges this political reality and addresses it by requiring these judicial nominating commissions be staffed by equal numbers of Democrats and Republicans, ensuring that every district and appeals court nominee would be put forth with bipartisan support.

If implementing this plan at the appellate level proves too challenging in the short term, then starting with statewide nominating commissions in charge of finding district court nominees – many of which already exist in several states – would be a positive first step.

Conclusion:

Enforcement of these proposals is the main challenge to success, of course, since “advice and consent” has never been defined to anyone’s satisfaction.

But we believe it’s important to have conversations about the declining health of our judicial norms and the proposals that are best suited to fix them.

If you are interested in submitting your own proposals, please send them to Tyler@FixTheCourt.com.