

# Bush installs right-wing judge without Senate confirmation

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For the second time this year, President Bush bypassed the regular constitutional process of Senate confirmation to install a far-right nominee as a federal appeals court judge. Both nominations had been blocked by the opposition of Senate Democrats who mounted filibusters to prevent a confirmation vote.

The White House announced February 20 that Bush was making a recess appointment of William H. Pryor Jr., the attorney general of Alabama, to fill a vacant seat on the 11th Circuit Court of Appeal, which is based in Atlanta and has jurisdiction over appeals from federal district courts in Alabama, Georgia and Florida.

Five weeks ago, Bush took a similar action, elevating Federal District Judge Charles Pickering to the Fifth Circuit Court of Appeals, which covers Mississippi, Louisiana and Texas.

Recess appointments have been carried out by past presidents to fill vacancies in between sessions of Congress, usually with nominees who would have easily won confirmation if the Senate were conducting business. The nominee serves until the end of the next congressional session, with the expectation that he or she will eventually be confirmed.

President Clinton made such a nomination as he left office in January 2001, naming Roger Gregory to the Fourth Circuit Court of Appeals after Senate Republicans blocked confirmation in a dispute, not with the nominee, but over how many judicial seats were needed in that circuit. Gregory joined the appeals court and his name was resubmitted by the Bush White House to the next session of Congress, where he quickly won confirmation.

Bush is proceeding quite differently, however, and in a manner which smacks of an authoritarian regime seeking to ride roughshod over opposition, with contempt for constitutional niceties.

His procedure in the case of Pickering was highly unusual because Bush filled the vacancy with a nominee who had been twice rejected by the Senate. Pickering's nomination was voted down by the Senate Judiciary Committee in 2001, when the Senate was under Democratic control. Resubmitted after the Republicans won control in the 2002 elections, his nomination was blocked by filibuster.

There was not a major outcry by Senate Democrats over the Pickering recess appointment, because they viewed it as largely cosmetic, a sop to Bush's Christian fundamentalist supporters without great practical effect. Because the last congressional session ended in December 2003, the 66-year-old Pickering will serve only until the end of this year, after which he is expected to retire from the court with an increased pension and not seek renomination.

Pryor, however, is only 41 years old, and will serve until the end of 2005, at which time he would certainly be renominated if the Republicans still control the White House and the Senate. His nomination was described by the *Washington Post*—which has editorially supported many of Bush's most extreme judicial nominees—as “a provocation” by the Bush White House.

The Alabama attorney general is a notorious opponent of the right to abortion who has described the Supreme Court's *Roe v. Wade* decision as “the worst abomination in the history of constitutional law.” He is a fervent proponent of capital punishment and espouses anti-gay bigotry, which he described as “a value judgment” based on his Roman Catholic faith.

When Pryor appeared before the Judiciary Committee last year, his Republican supporters claimed that the Democrats who opposed his nomination were guilty of anti-Catholic prejudice—a particularly offensive charge

given that these Democrats included Patrick Leahy, Richard Durbin and Edward Kennedy, all of Irish Catholic heritage.

Despite the furor by right-wing and Christian fundamentalist groups, Senate Democrats have mounted only the most timid opposition to Bush's judicial nominees, blocking only six of the 171 nominations made by Bush to the federal district and appeals courts. This compares to 60 judicial nominations blocked by Senate Republicans during Clinton's two terms.

Nonetheless, the White House sought to portray a toothless tabby-cat as a savage beast of prey. A statement released after the Pryor nomination declared, "A minority of Democratic senators has been using unprecedented obstructionist tactics to prevent him and other qualified nominees from receiving up-or-down votes. Their tactics are inconsistent with the Senate's constitutional responsibility and are hurting our judicial system."

There is, of course, nothing unconstitutional about filibustering a judicial nomination. Senate Republicans used such methods to block the elevation of Abe Fortas to Chief Justice of the Supreme Court 36 years ago, and in the course of the 1990s repeatedly refused to allow Clinton judicial nominations to come to a vote—with barely a peep from the Democrats.

It is true, as press commentaries have pointed out, that the Bush administration is using the conflict over judicial nominations to stoke up passions in its extreme-right base in preparation for the 2004 election campaign. But there are more fundamental issues. The White House and the Republican Party leadership are laying the basis for entirely bypassing constitutional processes in relation to judicial appointments, especially in the event of a vacancy on the Supreme Court, which would quickly become the focus of a major national political conflict.

The Republicans have already resorted to the method of "dirty tricks" in the course of the political warfare over judicial appointments. Last fall it was revealed that Republican staffers on the Senate Judiciary Committee had hacked into computer files of the Democratic members of the committee, taking internal strategy memos and leaking them to the *Wall Street Journal*, the *Weekly Standard* and other right-wing media outlets.

On February 9 the Senate Sergeant-at-Arms William Pickle gave a secret briefing to the Judiciary Committee on his preliminary investigation into the theft of files, which has already compelled the resignation of Manuel Miranda, a top aide to Senate Majority Leader Bill Frist. "Perhaps thousands of documents" from Democratic files were found on the hard drive of a Republican staff member, according to one report.

The violation was so egregious that Republican members of the committee, including Lindsey Graham of South Carolina, Jon Kyl of Arizona, John Cornyn of Texas and the committee's chairman, Orrin Hatch of Utah, were compelled to denounce it and promise a full-fledged investigation.

Now the breaking into the files of opposition members of the Senate—a sort of electronic Watergate—is being followed up by flagrant defiance of constitutional procedures by the Bush White House, which more and more conducts itself as an authoritarian regime.



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