



MEMORANDUM

February 5, 2009

To: Senate Judiciary Committee
Attention: Frank Scaturro

From: Denis Steve Rutkus, Specialist on the Federal Judiciary, 7-7162
Susan Navarro Smelcer, Analyst on the Federal Judiciary, 7-8958

Subject: **President George W. Bush’s Unconfirmed Lower Federal Court Nominees Who Lacked the Support of their Home State Senators**

This memorandum responds to your request for a list of President George W. Bush’s unconfirmed nominees to lower federal court judgeships who lacked the support of both home state Senators. You specified that the list should cover all such unsuccessful U.S. circuit court of appeals and U.S. district court nominations during the eight years of the Bush presidency.

It was agreed that the primary source that CRS would use to identify whether a circuit or district court nominee lacked the support of both home state Senators would be a record of one or both Senators having declined to return a positive “blue slip” to the Senate Judiciary Committee concerning the nominee. It was also agreed that, to identify instances of Senators not returning blue slips to the Judiciary Committee during the 107th and 108th Congresses, CRS would consult blue slip listings for those Congresses posted on a Department of Justice website link. The lists indicate, for each circuit and district court nomination made during those Congresses, whether and when the two home state Senators returned positive blue slips to the Judiciary Committee. As similarly comprehensive blue slip information for the 109th and 110th Congresses is not publicly available, it was decided that CRS, in researching your request, would consult blue slip logs that Republican staff on the Judiciary Committee have maintained during the last two Congresses, and which you have supplied to CRS as a reference source.

Table 1 lists and summarizes President Bush’s lower court nominees whose nominations were returned or withdrawn and not resubmitted and did not receive positive blue slips from both home state Senators.

Table 1. President George W. Bush’s Unconfirmed U.S. Circuit Court and U.S. District Court Nominees Not Receiving Positive Blue Slips from Both Home State Senators.

Name	Court	Congress	Date		Outcome
			First Nomination ^a	Final Action	
U.S. Circuit Court Nominees					
Rosenstein, Rod J. (MD)	4	110	11/15/2007	1/2/2009	Returned
Pratter, Gene E.K. (PA)	3	110	11/15/2007	7/24/2008	Withdrawn

Name	Court	Congress	Date		Outcome
			First Nomination ^a	Final Action	
Saad, Henry W. (MI)	6	109	11/8/2001	3/27/2006	Withdrawn
Smith, William E. (RI)	1	110	12/6/2007	1/2/2009	Returned
Kuhl, Carolyn B. (CA)	9	108	6/22/2001	12/8/2004	Returned
Murphy, Stephen J., III (MI)	6	110	6/28/2006	4/15/2008	Withdrawn
Stone, Shalom D. (NJ)	3	110	7/17/2007	1/2/2009	Returned
Simon, Philip P. (IN)	7	110	9/26/2008	1/2/2009	Returned
Getchell, E. Duncan, Jr. (VA)	4	110	9/6/2007	1/23/2008	Withdrawn
Preska, Loretta A. (NY)	2	110	9/9/2008	1/2/2009	Returned
U.S. District Court Nominees					
Rohlfing, Frederick W., III	HI	108	1/23/2002	5/6/2004	Withdrawn
Rogan, James E.	C.CA	110	11/15/2006	1/2/2009	Returned
Almond, Lincoln D.	RI	110	11/15/2007	1/2/2009	Returned
Conolly, Colm F. ^b	DE	110	2/26/2008	1/2/2009	Returned
Dugas, David R.	M.LA	110	3/19/2007	1/2/2009	Returned
Ryan, Daniel P.	E.MI	109	4/28/2003	3/30/2006	Withdrawn
Donohue, Mary O.	N.NY	110	6/28/2006	9/6/2007	Withdrawn
Jung, William F.	M.FL	110	7/10/2008	1/2/2009	Returned
Hernandez, Marco A.	OR	110	7/23/2008	1/2/2009	Returned
Tharp, John J., Jr.	N.IL	110	7/31/2008	1/2/2009	Returned
Marcelle, Thomas	N.NY	110	7/31/2008	1/2/2009	Returned
Davis, J. Mac ^c	W.WI	110	9/9/2008	1/2/2009	Returned
Total nominees lacking explicit support of both Home State Senators					22
<i>Total circuit court nominees</i>					10
<i>Total district court nominees</i>					12
Total nominations submitted after July 10 of a presidential election year					7
<i>Total circuit court nominations</i>					2
<i>Total district court nomination</i>					5

Sources: CRS Judicial Nominations Database, Department of Justice Blue Slip Records, Records provided by Senate Judiciary Committee Staff.

Notes: This table lists the Article III nominees that lacked the support of both home state Senators. In some of these cases, both senators failed to return blue slips supporting the nominees. In others, only one senator supported the nominee through the return of the blue slip. The other either failed to return their blue slip or actively opposed the nominee.

- a. Date of first nomination reflects a nominee's first nomination by President George W. Bush.
- b. Both senators from Colm Connolly's home state of Delaware returned blue slips in response to Connolly's nomination to the District Court of Delaware. Unlike Senator Carper, who explicitly supported Connolly's nomination, Senator Biden returned a blue slip without supporting or opposing the nomination.

- c. Neither Senator Kohl nor Senator Feingold returned a blue slip for J. Mac Davis's nomination to the Western District of Wisconsin. However, both senators, along with Representative Sensenbrenner, were members of a nominating commission that forwarded Davis's name and four others to be considered for nomination to this court.

Table 2 summarizes the number of nominees lacking home state Senator support whose nominations were returned or withdrawn and not resubmitted. The associated percentages in the table cells indicate the percentage of total circuit or district court nominees whose nominations were returned or withdrawn and not resubmitted, regardless of home state Senator support.

Table 2. Outcome of Art. III Nominations Lacking Support of Both Home State Senators
Number of Nominees Returned or Withdrawn and Not Resubmitted, by Court

Type of Court	Number Returned	Number Withdrawn	Total
<i>Circuit Court</i>	6 (33.3% of total circuit court nominees returned)	4 (66.7% of total circuit court nominees withdrawn)	10 (41.7% of total unsuccessful circuit court nominees)
<i>District Court</i>	9 (42.9% of total district court nominees returned)	3 (75.0% of total district court nominees withdrawn)	12 (48.0% of total unsuccessful district court nominees)
Total	15 (38.5% of total Art. III nominees returned)	7 (70.0% of total Art. III nominees withdrawn)	22 (44.9% of total unsuccessful Art. III nominees)

Source: CRS Judicial Nominations Database, Department of Justice Blue Slip Records, Records provided by Senate Judiciary Committee Staff.