

# EXECUTIVE NOMINATIONS, JUDICIAL EMERGENCIES AND CHANGE IN WH COUNSEL'S OFFICE

Abby Philip and Josh Gerstein at Politico have an excellent piece up on the state of Executive Branch nominations in the Obama Administration.

It's crunch time for the White House to get key executive branch jobs filled before the end of President Barack Obama's first term.

Dozens of top posts in both the executive branch and the judiciary remain vacant, while some of those who started near the beginning of the administration are bailing out.

Nominees who aren't confirmed by the Senate by the end of this year likely will become tangled in election-year politics, given Republican hopes of taking the White House, the Senate or both. If Obama wants a good shot at getting his nominees through this year, Hill veterans say, names need to reach the Senate by the summer recess.

Adding to the heightened urgency for action: Many of the unfilled posts deal with Obama's major policy priorities, including financial regulatory reform, immigration and health care. Not coincidentally, those positions also are some of the most likely to become ensnared in partisan disputes.

Go read their full article, it is a good across the board discussion on nominees and where we stand in various areas of interest.

There are two areas of the Politico piece I want to draw attention to. The first is the critical importance of work and support by the White House for their nominees and the nomination process.

But one former official said much of the blame for the slow pace lies with the White House.

“A lot of fingers have been pointed at the Senate,” said Chase Untermeyer, who served as director of presidential personnel for President George H.W. Bush. “I always say that two-thirds of the job is on the executive side.”

Exactly. For one thing, it is hard for an administration to get a confirmation if it does not make nominations. Take federal judges for instance, for most of the past two years there have been around a hundred vacancies on the Circuit and District courts; Mr. Obama has rarely had nominees for more than half of them. This is simply federal administrative incompetence, and it takes a heavy toll in the hallways and dockets of justice. Gerstein and Phillip pointed to the appalling state of play in Arizona to illustrate the issue. I owe them a debt of gratitude for pointing the Arizona situation out, because I have long been screaming about the empty seats and docket problems both here in Arizona and in the 9th Circuit.

For most of the last half of 2010, Chief Judge John Roll was in the process of certifying the District of Arizona as a formal “judicial emergency” zone from docket overcrowding, a situation that exacerbates relentlessly in most all case types, but especially from immigration and immigration related types of cases. We needed more judges allotted to start with, but have simply been killed from having long had two empty District judicial seats that were not only empty, but for which Obama could apparently not even be bothered to name nominees for.

Then John Roll was killed in the Giffords shooting, leaving three empty seats in a District that would need another two seats to have some normalcy even if all three of those traditional seats were indeed filled. In the intervening six months since Judge Roll's death, Obama has not designated one solitary nominee for the previous two openings, nor John's now empty large chair. It is simply unacceptable and a dereliction of duty.

It is not just judges either, Obama was extremely slow to move out Bush/Cheney US Attorneys (and only recently did so with the extremely troubling Leura Canary), has left a dearth of economic positions unfilled including the absolutely critical position of Director of the Consumer Finance Protection Board (which cannot even become fully operational without a Director) and, of course, has struggled to fill key Justice Department positions, including at OLC.

But, as Chase Untermeyer pointed out, there also is the issue of support for the nominees by the White House. For all the bad mouthing of Greg Craig, Bob Bauer has not been able to get that much more accomplished on the nomination priorities, and the word is that he honestly tried. You have to wonder what type of high wall and tin ear the Obama inner circle has up to ignore the critical need to fill vacant positions causing literal emergencies in the field.

The other point that leaps out from the Politico piece is who the Obama brain trust put in the lead for Presidential Personnel, a position critical to making and shepherding executive nominees:

Less than five months into his administration, Obama nominated Presidential Personnel Director Don Gips – a former high-tech executive – as ambassador to South Africa. Months later, White House Counsel Greg Craig quit.

“They did some things that hurt them: changing leadership of the president’s office of personnel, which pushed them back,” said Clay Johnson, who was former President George W. Bush’s personnel director and co-chairs the Aspen Institute’s committee on presidential appointments.

Gips was replaced in 2009 by his 30-year-old chief of staff, Nancy Hogan, a little-known former aide to Daschle.

Quite frankly, Phillip and Gerstein understate how shocking this fact is. This is a position that is exceedingly important to all nominations in general, although WH Counsel’s Office generally leads on justice related nominations. Putting a 30 year old in charge of this job, no matter how talented they are, is simply amazing. It is a process and job that calls for material gravitas and experience working the process on the Hill; it defies credulity that was the path of the Obama Administration.

At any rate, the Politico article is an excellent barometer and report of where we are and why on the nomination gap in the Obama Administration, and it is a troubling picture in many regards. Obama is certainly due credit for getting two Supreme Court justices confirmed in a forthright manner, but the record apart from that is pretty damning.

The other news of note today fits right in with the discussion nicely. Bob Bauer is leaving his position as White House Counsel. From the official White House announcement:

Today, June 2nd , the White House announced that White House Counsel Bob Bauer will return to private practice and that current Principal Deputy Counsel to the President Kathryn Ruemmler will serve as White House Counsel.

“Bob is a good friend and has served as

a trusted advisor for many years," said President Obama. "Bob was a critical member of the White House team. He has exceptional judgment, wisdom, and intellect, and he will continue to be one of my close advisors."

At the end of June, Bauer will return to Perkins Coie where he will resume his practice focused on serving as general counsel to the President's reelection campaign, general counsel to the Democratic National Committee, and personal lawyer to President Obama.

I do not know much about Ruemmler, but she does have a solid background it appears. The decision by Bauer to leave may raise a few eyebrows, but it actually makes a lot of sense. Bauer is an extremely accomplished Democratic campaign attorney, and the party is starting to gear up in full for the 2012 election. Bauer can really make a valuable impact in that capacity, and after banging his head against the nomination wall in the White House, the return to his standard haunts is probably a welcome thing.