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Fixing the Federal Judicial Selection Process

Carl W. Tobias
University of Richmond, ctobias@richmond.edu

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Federal court selection is eviscerated. Across five years in Barack Obama's presidency, the judiciary confronted some eighty-five vacancies because Republicans never agreed to prompt Senate consideration. Only when the Democratic majority ignited the "nuclear option," a rare action that permitted cloture with fewer than sixty votes, did gridlock end. However, openings quickly grew after the Grand Old Party (GOP) captured an upper chamber majority, notwithstanding substantial pledges that it would supply "regular order" again. Over 2015, the GOP cooperated little, approving the fewest jurists since Dwight Eisenhower was President. However, selection might worsen. This year is a presidential election year, a period in which confirmations traditionally slow to a halt, and a predicament that controversy regarding Justice Antonin Scalia's High Court vacancy exacerbates. At the next inauguration, the bench may experience 100 unfilled circuit and trial level positions. These concerns demonstrate that the broken appointments system requires permanent improvement.

This survey evaluates confirmations during President Obama's tenure, detecting that Republicans have plumbed new depths for obstruction. Because this recalcitrance undermines judicial selection, the delivery of justice and respect for the coequal branches of government, the analysis proffers multiple long-term solutions, notably a bipartisan judiciary, which could enhance the process.

I. JUDICIAL SELECTION IN THE OBAMA ADMINISTRATION

Appointments functioned comparatively well across President Obama's initial six years when Democrats possessed a chamber majority. He assiduously consulted home state legislators, pursuing names of able,

[*] Williams Chair in Law, University of Richmond. I wish to thank Michael Gerhardt and Margaret Sanner for valuable suggestions, Katie Lehnen for valuable research and Leslee Stone for excellent processing as well as Russell Williams and the Hunton Williams Summer Endowment Fund for generous, continuing support. Remaining errors are mine.

mainstream choices, advice which the White House normally followed.[1] Those efforts increased collaboration, as members grant lawmakers from states with vacancies deference because the politicians can stop the process through retaining "blue slips." Despite persistent Administration cultivation of individual Republicans and Democrats, a number failed to swiftly institute procedures or even send picks.[2]

The GOP collaborated in arranging Senate Judiciary Committee hearings,[3] yet Republicans "held over" discussions and ballots a week on virtually every strong, moderate nominee.[4] The party slowly concurred in most recommendations' floor debates, when needed, and chamber votes, requiring accomplished, mainstream nominees to languish months until Democrats petitioned for cloture.[5] Republicans also demanded numerous roll call ballots and debate minutes on fine, centrist nominees, many of whom easily won approval, thus squandering rare floor time.[6] These practices stymied confirmations and left courts with almost ninety openings for much of a half decade, which commenced in August 2009.[7]

In the 2012 presidential election year, those strategies grew, while Republicans halted circuit floor votes in June.[8] After President Obama's victory, Democrats hoped for more cooperation, yet there was virtually none and this resistance culminated across 2013 when the White House proposed three excellent, moderate, diverse nominees for the D.C. Circuit, the second

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[1] Carl Tobias, *Senate Gridlock and Federal Judicial Selection*, 88 NOTRE DAME L. REV. 2233, 2239–40 (2013); *see* Sheldon Goldman, Elliott Slotnick & Sara Schiavoni, *Obama's First Term Judiciary: Picking Judges in the Minefield of Obstructionism*, 97 JUDICATURE 7, 8–17 (2013).

[2] Goldman et al., *supra* note 1, at 17; *John Cornyn and Ted Cruz's Texas: State of Judicial Emergency*, ALLIANCE FOR JUST. (2016), http://www.afj.org/our-work/issues/judicial-selection/texas-epicenter-of-the-judicial-vacancy-crisis; *see* 161 CONG. REC. S6,151 (daily ed. July 30, 2015) (statement of Sen. Schumer).

[3] Several GOP committee members also posed numerous later written queries. Tobias, *supra* note 1, at 2242; Goldman et al., *supra* note 1, at 21.

[4] Republican senators deemed most nominees excellent, but the GOP allowed only one dozen of 337 to have votes the first time that the panel considered them. *See* Tobias, *supra* note 1, at 2242–43.

[5] I rely in the remainder of this paragraph on Tobias, *supra* note 1, at 2243–46; Goldman et al., *supra* note 1, at 26–29.

[6] *See* Tobias, *supra* note 1, at 2244; *see also* Juan Williams, Opinion, *The GOP's Judicial Logjam*, HILL (July 27, 2015, 6:00 AM), http://thehill.com/opinion/juan-williams/249196-juan-williams-the-gops-judicial-logjam.

[7] Both the substantial number of vacancies and the extensive time period were unprecedented. *Archive of Judicial Vacancies*, U.S. CTS., http://www.uscourts.gov/judges-judgeships/judicial-vacancies/archive-judicial-vacancies (last visited May 10, 2016) (including archives listing federal judicial vacancies since 1981).

[8] Tobias, *supra* note 1, at 2246; Russell Wheeler, *Judicial Confirmations: What Thurmond Rule?*, 45 ISSUES IN GOVERNANCE STUD., Mar. 2012, at 1, 4–5.

most important tribunal.[9] The GOP refused all three candidates' final ballots, and protracted obstruction eventually led Democrats to cautiously apply the "nuclear option," which curtailed filibusters.[10]

In 2015, after Republicans won a Senate majority,[11] nominal GOP cooperation diminished even further. The leaders repeatedly proclaimed that they would duly restore the deliberative body to regular order, the scheme which governed before Democrats putatively undercut it. That January, Mitch McConnell (R–Ky.), the new Majority Leader, stated, "We need to return to regular order," and he dramatically reiterated this paean over the year.[12] Chuck Grassley (R–Iowa), the Senate Judiciary Chair, articulated similar concepts.[13] Despite many analogous promises, the GOP slowly provided suggestions for President Obama's review, committee hearings with votes or floor debates and ballots.

By the close of 2015, thirty-six of forty-three (eight in nine circuit) vacancies without nominees and twenty of twenty-two lacking them—which the Administrative Office of the U.S. Courts classified as emergencies—plagued states with at least one Republican senator.[14] The chamber approved a lone circuit, and only ten district, prospects in 2015, while the bench encountered sixty-six openings.[15]

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[9] I rely in the remainder of this paragraph on Carl Tobias, *Filling the D.C. Circuit Vacancies*, 91 IND. L.J. 121 (2015); *see* Jeffrey Toobin, *Can Merrick Garland Kill the Filibuster?*, NEW YORKER (Mar. 25, 2016), http://www.newyorker.com/news/daily-comment/can-merrick-garland-kill-the-filibuster.

[10] Detonation allowed the Senate to confirm many judges. Toobin, *supra* note 9. After the November 2013 explosion, Democrats had to petition for cloture on all nominees until 2015. 161 CONG. REC. S3,223 (daily ed. May 21, 2015) (statement of Sen. Leahy).

[11] Jerry Markon, Robert Costa & David Nakamura, *Republicans Win Senate Control as Polls Show Dissatisfaction with Obama*, WASH. POST (Nov. 4, 2014), https://www.washingtonpost.com/politics/senate-control-at-stake-in-todays-midterm-elections/2014/11/04/e882353e-642c-11e4-bb14-4cfea1e742d5_story.html; *see* Jonathan Weisman & Ashley Parker, *G.O.P. Takes Senate*, N.Y. TIMES, Nov. 5, 2014, at A1.

[12] 161 CONG. REC. S27–28 (daily ed. Jan. 7, 2015); *id.* at S2,767 (daily ed. May 12, 2015). *But see id*. at S2,949 (daily ed. May 18, 2015) (statement of Sen. Reid); *id*. at S3,223 (daily ed. May 21, 2015) (statement of Sen. Leahy).

[13] Grassley pledged that the committee would follow regular order in analyzing nominees. *Hearing on Judicial Nominations Before the S. Comm. on the Judiciary*, 114th Cong. (Jan. 21, 2015) (statement of Sen. Chuck Grassley); David Catanese, *Chuck Grassley's Gavel Year*, U.S. NEWS & WORLD REP. (Jan. 28, 2015), http://www.usnews.com/news/articles/2015/01/28/chuck-grassleys-gavel-year. *But see* 161 CONG. REC. S6,151 (daily ed. July 30, 2015) (statement of Sen. Schumer); Jason Noble, *Grassley Leads Slowdown of Judicial Confirmations*, DES MOINES REG. (Apr. 1, 2016, 12:01 PM), http://www.desmoinesregister.com/story/news/politics/2016/03/30/grassley-leads-slowdown-judicial-confirmations/82440284/.

[14] *Archive of Judicial Vacancies*, *supra* note 7. The federal court administrative arm premises emergencies on dockets' large size and vacancies' prolonged length.

[15] *Id.*

The process began slowly in 2016, which comprises a presidential election year when approvals customarily stall and ultimately halt, a circumstance worsened by Republican denial of any procedures to President Obama's Supreme Court nominee.[16] The panel accorded *one* trial court submission a hearing before April 20, 2016,[17] and has continued holding over two district aspirants for months without providing a reason.[18] Five nominees won confirmation before President's Day,[19] although under regular order, they deserved votes in 2015. It remains unclear how long the GOP will employ its failure to consider D.C. Circuit Chief Judge Merrick Garland as one critical excuse for also declining scrutiny of lower court possibilities.

II. THE REASONS FOR AND IMPLICATIONS OF PROBLEMATIC JUDICIAL SELECTION

The reasons for selection difficulties are not clear,[20] but observers ascribe the modern "confirmation wars" to Judge Robert Bork's 1987 attempted Supreme Court appointment.[21] They discern that the process is broken and marked by rampant partisanship, systematic paybacks, and divisive gamesmanship, whereby the parties keep ratcheting down the scheme.[22] The

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[16] Theodore B. Olson, Opinion, *A Supreme Court Challenge for Democrats*, WALL ST. J. (Apr. 28, 2016), http://www.wsj.com/articles/a-supreme-court-challenge-for-democrats-1461885048; Michael D. Shear, Julie Hirschfield Davis & Gardiner Harris, *Obama Pick Engages Supreme Court Battle*, N.Y. TIMES, Mar. 17, 2016, at A1; Russell Wheeler, *With Senate Control, Will the GOP Stop Confirming Circuit Court Judges?* BROOKINGS: FIXGOV (June 10, 2015, 8:00 PM), http://www.brookings.edu/blogs/fixgov/posts/2015/06/10-circuit-court-confirmations-wheeler.

[17] *Hearings on Judicial Nominations Before the S. Comm. on the Judiciary*, 114th Cong. (Jan. 27, 2016); *id.* (Apr. 20, 2016).

[18] Nominees Robert Colville and John Younge had their Pennsylvania senators' support and a 2015 hearing. *Hearings on Judicial Nominations Before the S. Comm. on the Judiciary*, 114th Cong. (Dec. 9, 2015).

[19] *Confirmation Listing*, U.S. CTS., http://www.uscourts.gov/judges-judgeships/judicial-vacancies/confirmation-listing (last updated May 7, 2016); *Agreement on Restrepo Nomination*, U.S. SENATE DEMOCRATS (Dec. 9, 2015, 5:15 PM); *see* 162 CONG. REC. S1,848 (daily ed. Apr. 11, 2016); *id*. at S2,812 (daily ed. May 16, 2016) (confirming two district judges since the President's Day Recess).

[20] Numerous observers, particularly scholars and federal lawmakers, robustly debate whether appointments have always been complicated. Michael J. Gerhardt & Michael Ashley Stein, *The Politics of Early Justice: Federal Judicial Selection, 1789–1861*, 100 IOWA L. REV. 551 (2015); Orrin G. Hatch, *The Constitution as the Playbook for Judicial Selection*, 32 HARV. J. L. & PUB. POL'Y 1035 (2009).

[21] ETHAN BRONNER, BATTLE FOR JUSTICE: HOW THE BORK NOMINATION SHOOK AMERICA (1989); MARK GITENSTEIN, MATTERS OF PRINCIPLE: AN INSIDER'S ACCOUNT OF AMERICA'S REJECTION OF ROBERT BORK'S NOMINATION TO THE SUPREME COURT (1992); Olson, *supra* note 16.

[22] The latest battle commenced with claims that Democrats had stalled President Bush's last years and Republican retaliation with unprecedented delay in President Obama's time. Democrats then used the nuclear option to approve many judges in 2014's lame duck session to which the GOP responded by drastically slowing picks since 2015. *See supra* notes 1–19 and accompanying text.

effects are grave. Prolonged inaction means that the bench has eighty lower court, and thirty emergency, vacancies, a number Republicans permitted to increase since the party won the chamber.[23] Only *after* Democrats used the nuclear option to restrict filibusters did the judiciary experience forty vacancies at 2014's conclusion; however, since the GOP captured a Senate majority, the number has increased to eighty openings.[24]

Lengthy confirmations have detrimental impacts.[25] They require able, mainstream nominees to place careers on hold, stop myriad fine people from envisioning bench service, [26] and deprive tribunals of crucial judicial resources, which all courts need to discharge their constitutional responsibilities, while depriving parties of the justice that courts deliver.[27] These phenomena also undermine citizens' regard for the selection procedures and the coordinate government branches.[28] In sum, those problems show the profound need for long-term solutions.

III. SUGGESTIONS FOR THE FUTURE

Manifold elements demonstrate that 2016 is past time for seriously examining remedies that would permanently improve the atrophied selection process: the fewest confirmations last year since 1960;[29] over eighty vacancies'

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[23] Emergency vacancies skyrocketed from twelve in 2015 to as many as thirty-four subsequently. *Judicial Vacancies*, U.S. CTS., http://www.uscourts.gov/judges-judgeships/judicial-vacancies (last updated May 7, 2016); *see* 161 CONG. REC. S3,223 (daily ed. May 21, 2015) (statement of Sen. Leahy); *see* Joe Palazzolo, *In Federal Courts, the Civil Cases Pile Up*, WALL ST. J. (Apr. 6, 2015), http://www.wsj.com/articles/in-federal-courts-civil-cases-pile-up-1428343746.

[24] Recent Senate inaction could well yield 100 openings and 50 emergencies during 2017. *See* sources cited *supra* note 16.

[25] 160 CONG. REC. S5,364 (daily ed. Sept. 8, 2014) (statement of Sen. Leahy); Tobias, *supra* note 1, at 2253.

[26] *See* Andrew Cohen, *In Pennsylvania, the Human Costs of Judicial Confirmation Delays*, ATLANTIC (Sept. 9, 2012), http://www.theatlantic.com/politics/archive/2012/09/in-pennsylvania-the-human-costs-of-judicial-confirmation-delays/261862/; Todd Ruger, *Nominees Are Living on Hold; Caught in a Political Game, Judicial Candidates Get Used to Waiting*, NAT'L L.J. (Dec. 17, 2012), http://www.nationallawjournal.com/id=1202581557603/Nominees-are-living-on-hold; *see also* Tobias, *supra* note 1, at 2253.

[27] JOHN ROBERTS, 2010 YEAR-END REPORT ON THE FEDERAL JUDICIARY 7–8 (2010); Tobias, *supra* note 1, at 2253; Jennifer Bendery, *Federal Judges Are Burned Out, Overworked and Wondering Where Congress Is*, HUFFINGTON POST (Sept. 30, 2015, 2:15 PM), http://www.huffingtonpost.com/entry/judge-federal-courts-vacancies_us_55d77721e4b0a40aa3aaf14b.

[28] *See* sources cited *supra* notes 23, 25–27.

[29] Particularly ironic about 2015 was the Senate failure to even match approvals in several recent presidential election years. *See* Carl Tobias, *Filling Judicial Vacancies in a Presidential Election Year*, 46 U. RICH. L. REV. 985, 996 (2012).

persistence throughout an unprecedented half decade; the regime's downward spiral manifested by counterproductive paybacks and striking politicization, culminating with GOP refusal to assess President Obama's Supreme Court nominee; and the dismal prospects for rectifying the conundrum. However, 2016 is also a promising season for developing cogent long-term reform. As a presidential election year, when numerous Democrats *and* Republicans will be unsure who could ultimately triumph and capitalize on the modifications but wish to appear confident that their nominees might win, 2016 supplies uncertainties and opportunities for compromise. Therefore, both parties should favor permanent solutions, while President Obama and legislators need to respect constitutional appointments duties with meaningful cooperation that prescribes these remedies.[30]

President Obama and senators can agree on dramatically changing the present system through inauguration of a bipartisan judiciary that would enable the party without administration control to suggest a percentage of aspirants.[31] Lawmakers from certain states have instituted relatively analogous concepts over various periods. New York senators effectuated the first initiative that allowed the official whose party lacked the executive to forward one in several district choices, and this measure operated efficaciously from the 1970s until the 1990s.[32] Pennsylvania is a modern example. Senators Robert Casey (D–Pa.) and Patrick Toomey (R–Pa.) now depend on merit-selection commissions, which have vetted and recommended persons since 2011,[33] while the legislator whose party does not occupy the White House might send one in four trial court nominees.[34]

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[30] For numerous short-term and permanent measures that would address the confirmation wars, see Michael L. Shenkman, *Decoupling District from Circuit Judge Nominations: A Proposal to Put Trial Bench Confirmations on Track*, 65 ARK. L. REV. 217, 298–311 (2012); Tobias, *supra* note 1, at 2255–65.

[31] Michael J. Gerhardt, *Judicial Selection as War*, 36 U.C. DAVIS L. REV. 667, 688 (2003); Carl W. Tobias, *Postpartisan Federal Judicial Selection*, 51 B.C. L. REV. 769, 790 (2010).

[32] It was initially one in four and most recently one in three under Senators Alphonse D'Amato (R–N.Y.) and Daniel Patrick Moynihan (D–N.Y.). 143 CONG. REC. S2,538 (daily ed. Mar. 19, 1997) (statement of Sen. Biden). *See generally* Stephan O. Kline, *The Topsy-Turvy World of Judicial Confirmations in the Era of Hatch and Lott*, 103 DICK. L. REV. 247, 249 (1999).

[33] *See President Obama Nominates Four PA Judges to Fill Federal Court Vacancies*, PENNSYLVANIANS FOR MODERN CTS. (July 20, 2015), http://pmconline.org/node/12.

[34] *Id.* Illinois senators use a similar system. Press Release, Sen. Dick Durbin, White House Nominates Two to Fill Federal Judicial Vacancies in Northern District (Aug. 5, 2014), http://www.durbin.senate.gov/newsroom/press-releases/durbin-white-house-nominates-two-to-fill-federal-judicial-vacancies-in-northern-district.

Varying rules pertain within the jurisdictions and would essentially comprise matters for negotiation among chamber members and between the senators and the President.[35] Central should be the percentages of submissions the opposition party affords, the number it could marshal for every opening, and whether designees need to be ranked.[36] For split delegations, the issues are whether the opposition politician from the state or the President will identify favorites or exercise vetoes and how to carefully resolve disagreement between this officer and the President. Salutary treatment would have that lawmaker proffer one candidate at a time until the White House concurs, as this solution respects constitutional phrasing and contemporary practice.[37]

Another matter is which tribunals should be eligible. For instance, particular tribunals, notably the D.C. District Court, may require exclusion, as the District of Columbia lacks senators and the Executive Branch conventionally spearheads the nomination process.[38] Because appellate vacancies occur less frequently while the regional circuits include multiple states, the bipartisan judiciary will apply best to courts with numerous jurists.[39] Those operational elements and perceptions that seating these judges is political, complex and compelling, as circuit opinions supposedly enunciate policy and govern more states, indicate tribunal exclusion would be preferable.

Congress should package this device with a bill which authorizes seventy-three judgeships.[40] That would implement the 2015 Judicial Conference recommendations, which the federal courts' policymaking arm derived from conservative estimates of work and case loads that will accord courts resources

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[35] *See* sources cited *supra* note 31. *But see Confirmation Hearings on Federal Appointments: Hearing Before the S. Comm. on the Judiciary, Part 1*, 105th Cong. 6 (1997) (statement of Sen. Biden); sources cited *supra* note 32.

[36] The procedures which senators presently employ in their jurisdictions suggest that opposition senators can pick one in three or four. Employing 2016, in states with two GOP senators, they choose, and in jurisdictions with two Democrats, the senior GOP official picks. All senators then must work with the President.

[37] *See infra* note 44. The lawmaker also might wish to supply multiple prospects and rank preferences, which can increase flexibility and expedite selection by obviating the need to start over when the President and senator differ.

[38] Those courts with a bipartisan judiciary could be matters for negotiation or be left to the opposition party. Small districts may warrant exclusion, as they rarely experience vacancies.

[39] Even in the Ninth Circuit, which is the largest appeals court, openings arise once in a generation for Alaska, Hawaii and Montana.

[40] Tobias, *supra* note 9, at 140. If the selection process continues to spiral downward, additional judgeships will not improve selection or the judicial vacancy crisis.

needed for delivering justice.[41] Those ideas must become effective over 2017, thereby advantaging neither party when first secured and preventing them from gaming the regime.[42]

Combining a bipartisan judiciary and seventy-three posts could yield many benefits. It would halt or slow the process's slide while affording each party incentives to collaborate, jurists who are comparatively diverse vis-à-vis experience, ideology, ethnicity, gender and sexual orientation and the bench resources. The concept's passage this year and institution over 2017 will concomitantly stop both parties from exacting unfair advantage. Nevertheless, implementation warrants some caution. For example, Vice President Joe Biden, as a senator from Delaware, vigorously criticized a related mechanism because it was not traditional, and the Constitution states that the President must nominate and confirm jurists with Senate advice and consent.[43] However, Biden's proposition applies equally to the unprecedented gridlock witnessed since 2009, while a bipartisan judiciary can be devised that honors the revered document.[44] Instituting this approach could appear complicated, yet any problems can be easily solved.[45]

Another long-term prospect is recalibrating the filibuster which has been essential to the modern confirmation wars. The notion traditionally safeguarded the minority party, although overuse shows that this now deserves reformulation by confining application.[46] For instance, deployment must effectively be restricted to nominees who lack the intelligence, diligence,

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[41] JUDICIAL CONF. OF THE U.S., REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONF. OF THE U.S. 18 (2015); *see* S. 1,385, 113th Cong. (2013) (providing the most recent comprehensive judgeships legislation).

[42] When the parties reach agreement *before* the elections, this makes it considerably more difficult for either to game the system.

[43] Biden was addressing "trades" between senators and the President, which Republicans proposed during President Bill Clinton's Administration. Georgia senators and President Obama seemed to employ trades when they could not reach agreement on nominees for many Georgia vacancies. Dan Malloy, *The Delegation of Georgians in D.C.*, ATLANTA J. CONST., July 20, 2014, at 14A; *see* sources cited *supra* note 32.

[44] The Constitution does not proscribe bipartisan courts. President Obama and Congress can agree to the ideas proposed above. A bipartisan judiciary may further politicize selection or deny political victors spoils. However, the measure could improve selection, the confirmation wars' continuation and expansion are unacceptable and judicial and litigant needs should be paramount.

[45] Congress has addressed issues equally complex as the confirmation wars, namely the judiciary's efforts to resolve substantial and increasingly complex litigation with scarce resources, by passing legislation that authorizes many new circuit and district judgeships. Nonetheless, Congress passed the last comprehensive judgeships legislation in 1990. *See* Federal Judgeship Act of 1990, Pub. L. No. 101-650, §§ 201–206, 104 Stat. 5089–104. Moreover, the ideas described earlier address numerous problems which establishment of a bipartisan judiciary might appear to create.

[46] Filibuster overuse provoked the 2013 nuclear option's controversial detonation. *See* sources cited *supra* notes 9–10.

temperament, ethics, or independence for providing exceptional judicial service. That purpose would be realized through employing filibusters only in "extraordinary circumstances," a system which performed smoothly across 2005, while comprehensively and clearly defining this precept.[47] Lawmakers argued that candidate ideological views and the magnitude of a court's filings and judicial complement were *not* actually extraordinary circumstances in resolving the dispute about filling three D.C. Circuit vacancies.[48] These alterations might foster reinstatement of sixty votes for cloture, a determination that would plainly reverse the nuclear option and supposedly promote cooperation.[49]

CONCLUSION

Federal judicial appointments have spiraled downward for too many years, a crisis which undercuts justice. Thus, President Obama and senators need to capitalize on the opportunity that the 2016 presidential election year affords by fashioning salient permanent remedies for the selection conundrum.

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[47] *See Text of Senate Compromise on Nominations of Judges*, N.Y. TIMES (May 24, 2005), http://www.nytimes.com/2005/05/24/politics/24text.html; *see also* Michael Gerhardt & Richard Painter, "*Extraordinary Circumstances*"*: The Legacy of the Gang of 14 and a Proposal for Judicial Nominations Reform*, 46 U. RICH. L. REV. 969 (2012); Gerard N. Magliocca, *Reforming the Filibuster*, 105 NW. U. L. REV. 303 (2011); Dahlia Lithwick, *Extraordinary Hypocrisy*, SLATE (May 19, 2011, 7:17 PM), http://www.slate.com/articles/news_and_politics/jurisprudence/2011/05/extraordinary_hypocrisy.html.

[48] Tobias, *supra* note 9, at 126–28. *But see id*. at 125–27.

[49] Reinstatement of the sixty-vote rule for cloture also may enhance filibuster deployment, prompting more petitions for cloture and floor votes. *Id*. at 140. An effective custom employed in President George Bush's last two years was floor votes on all strong, centrist district nominees immediately before lengthy recesses. 161 CONG. REC. S2,029 (daily ed. Mar. 26, 2015) (statement of Sen. Leahy). The Senate could apply many other conventions as well that would reinstitute regular order.