

A BIPARTISAN PLAN TO IMPROVE THE PRESIDENTIAL
APPOINTMENTS PROCESS

TESTIMONEY BEFORE THE UNITED STATES SENATE
COMMITTEE ON GOVERNMENTAL AFFAIRS

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I am delighted to appear before this Committee today, particularly since I see so many friends and colleagues who have been engaged in strengthening the public service over the years, be it at the top of the government in the presidential appointments process or at the entry-levels of the career civil service far below. While we might not always agree on the solutions, I think we all recognize the extreme importance of this undertaking. And that is why we all need to stay engaged and to recognize that reform is well worth the effort.

I am particularly delighted to be here today to talk about my work with my colleague, Franklin Raines, on building a pragmatic agenda of reforms that might improve the speed, fairness, and integrity of the presidential appointments process. As co-chairs of the advisory board of The Presidential Appointee Initiative, we are convinced that the current process desperately needs reform, and we urge the Committee to move quickly on our agenda of reform.

Simply stated, we are not going to attract the best and the brightest to Washington unless we can improve the appointments process. I think disillusionment with government service has reached a really dangerous level. I'm reminded a bit of Alice in Wonderland when she dropped through the rabbit hole and asked the Cheshire cat which way she should go, and he said, "Well, it depends on where you wish to get." Well, I think the answer to that question in this case is that we want to get to an appointments process that will help us attract talented men and women to government service, and get away from one that deters people from serving.

The State of the Presidential Appointments Process

According to research conducted by The Presidential Appointee Initiative, there is not a single stage of the appointments process -- not one -- where appointees do not say that it takes longer than it should. That goes for their initial contacts with the White House, the president's approval of their nomination, the FBI's full-field investigation, their early

contacts with members of Congress and congressional staff, to their final confirmation by the Senate.

There is simply no stage of the process that we can point to and say, “Well if we just fix this, the average time it takes to complete the appointments process will go from nine months to seven months.”

While all steps in the appointments process can and should be streamlined and improved, particular attention should be paid to strengthening the Senate confirmation process. The Senate received particularly low marks for its handling of the process in two surveys conducted for The Presidential Appointee Initiative.

Almost a year ago, when we launched The Presidential Appointee Initiative, we released the results of a survey of 435 appointees from the Reagan Bush and Clinton administrations. Nearly half of the appointees surveyed said the Senate has made the appointments process an ordeal; almost a third said the same about the White House.

Earlier this year, the initiative published the results of a survey of nearly 600 corporate and civic leaders who have never served as presidential appointees. These Fortune 500 CEOs, college and university presidents, nonprofit executives, think tank scholars, lobbyists and state and local government officials are exactly the types of individuals who should serve in what Benjamin Franklin called the “posts of honor” in the executive branch.

The vast majority of these corporate and civic leaders did indeed think that serving as a presidential appointee would be an honor, but many had harsh views of the system by which appointees are selected, cleared and confirmed. More than half said the words “confusing” or “embarrassing” fit the process well compared with 43 percent who said “fair” was an accurate description.

Potential appointees actually had more negative views of the process than appointees who served in prior administrations. Some 71 percent of the Reagan, Bush, and Clinton appointees surveyed by PAI last year described the process as “fair,” while just 47 percent described it as “a necessary evil,” 40 percent as “confusing,” and 23 percent as “embarrassing.” As the survey’s co-authors – Paul C. Light of the Brookings Institution and Virginia L. Thomas of the Heritage Foundation -- noted in the survey report, “familiarity [with the process] breeds a certain level of understanding and acceptance that is harder to embrace from afar.”

Potential appointees think the problems lie at both ends of Pennsylvania Avenue. Two-thirds of the respondents said the Senate made the process an ordeal and 42 percent said the White House was too demanding. Once again, corporate and civic leaders were more negative in their assessments than past appointees. Only 30 percent of the Reagan, Bush, and Clinton appointees interviewed last year described the White House process as an ordeal, while 46 percent described the Senate process as such.

The perceived benefits of presidential service were lowest among those who had been offered an appointment but turned it down or said they would have declined it. Just 2 percent of these respondents said an appointment would generate much greater respect from their family and friends, while 20 percent strongly agreed that an appointment would reduce their abilities to return to their careers. By comparison 23 percent of respondents who had never been considered for an appointment saw much greater respect through service, and only 7 percent strongly agreed that they would have trouble returning to their careers.

The more respondents knew about the appointments process, the lower they rated the benefits of service and the more they worried about the costs. Thus 9 percent of respondents who knew little or nothing about the system said salaries would be much or somewhat better than other comparable senior positions, compared with just 2 percent of those who knew a great deal or something.

Many corporate and civic leaders know little about the process. Nearly half of all respondents said they knew little or nothing about the appointments process. Lobbyists, think tank scholars, and university presidents were the most knowledgeable, nonprofit executives were in the middle, and corporate CEOs and state and local government officials were the least informed.

Many potential appointees base their impressions of the system on what they see in the media. All the groups interviewed said the media had some influence in forming their impressions of the process. Think tank scholars and lobbyists were more likely than the other groups to base their impressions on personal experiences or the experiences of their friends or colleagues.

Role of the Senate in the Appointments Process

Let me speak for a moment about the role of the Senate in the appointments process.

I'm sure there are some presidential appointees who wish the Senate wasn't involved in the process at all. But I think that the Founding Fathers were correct when they wanted a system of checks and balances, wanted the Senate to have a role of advice and consent.

The Senate itself has changed in the years since I left after serving for three terms. I've seen it become a much more contentious body, and confirmations become a much more laborious process.

But a hostile political environment is only part of the problem. More troublesome, but also more subject to correction, is the expanded utilization of procedures and practices that unnecessarily delay the confirmation process and create inviting opportunities for small groups of Senators, sometimes even for individual Senators, to thwart action by Senate majorities. Practices intended to be used only in the most extreme cases of concern about nominees' qualifications are now routinely employed on both sides of the

aisle, often simply to use nominees as hostages in political conflict over larger policy issues or legislative efforts.

The accumulated effect of these practices is deeply injurious to the federal government's ability to recruit and retain talented leaders in the executive and judicial branches. The following steps, we believe, will help to set the confirmation process on a sounder and more sensible foundation.

Reforming the Confirmation Process

The first recommendation deals with the number of positions requiring confirmation. We believe:

Congress should enact legislation providing that Senate confirmation only be required of appointments of judges, ambassadors, executive-level positions in the departments and agencies, and promotions of officers to the highest rank (O-10) in each of the service branches.

Confirmation of appointments is a constitutional duty of the Senate and a valuable component of the government's responsibility to ensure the fitness and diversity of those who serve in the highest administrative and judicial offices. But the application of the confirmation requirement now extends to many thousands of positions, only a relatively small number of which benefit from the full attention or careful scrutiny of the Senate.

We believe that this is an appropriate time for the Congress to do something it has never done: to review the entire scope of Senate confirmation responsibilities and to scale those responsibilities down to only those positions that are appropriate to its collective attention. We see no value, for example, in the continued requirement that all military, foreign service, and public health service promotions be subject to Senate confirmation.

Nor do we believe there is sufficient justification for Senate confirmation of part-time appointments to the government's many boards and commissions.

The Senate's participation in the appointments process is most valuably applied to positions of genuine management authority and to the judicial and ambassadorial positions for which it has constitutional responsibilities. A simpler, more focused set of confirmation obligations can only yield a more efficient and more consistent performance of the Senate's confirmation responsibilities.

The second recommendation deals with the use of holds:

The Senate should adopt a rule that limits the imposition of "holds" by all Senators to a total of no more than 14 days on any single nominee.

Few features of the modern appointments process are as troublesome as the Senate practice that permits any single Senator to delay indefinitely the confirmation of a nominee. Senators are under no obligation to announce the reasons for their holds nor to place only holds that are directly related to concerns about the individual's fitness to serve in the office to which nominated. With ever greater frequency in recent years, holds have been used to make well-qualified nominees hostages to some other dispute between the Senator placing the hold and the administration. The harmful consequences to efficient government management and to individual nominees are obvious.

We recognize that there may be times when Senators want to know more about a nominee and may require more time to gather information. In such cases, placing a temporary hold on a nomination may be useful. But we believe the Senate needs to limit the duration of these holds to ensure that they don't unduly delay the confirmation process nor unduly complicate the lives of the nominees in that process. A simple time limit on the total length of holds on any single nomination would better balance the legitimate needs of all parties to the confirmation process.

The third recommendation addresses the length of time it takes to vote on nominations:

The Senate should adopt a rule that mandates a confirmation vote on every nominee no later than the 45th day after receipt of a nomination. The rule should permit any Senator, at the end of 45 days, to make a point of order calling for a vote on a nomination. A majority of the Senate may postpone the confirmation vote until a subsequent date.

The average length of time required to confirm presidential appointees has been growing steadily in recent years. While there are many reasons for this, few of them are directly related to the task of reviewing and assessing the qualifications of nominees. But these delays impede the ability of presidents to manage the government and of courts to process their caseloads efficiently. Equally important, long confirmation delays leave nominees in an extended and awkward limbo. Nominees withdrawing in the midst of such long confirmation delays has been a more common phenomenon in recent years than ever before.

We believe that this is an appropriate time for the Senate to impose a firmer discipline on the confirmation process by establishing through Senate rule an expectation that any nomination would receive a confirmation vote by the full Senate no later than 45 days after receipt. Under such a procedure any Senator could call for a vote at that time, a vote that could be postponed only by vote of a majority of the Senate.

This would permit the Senate, in extraordinary circumstances, to take more than 45 days before voting on confirmation. But it would establish a standard review period and offer a mechanism for any Senator to request a confirmation vote at the end of a time long enough for careful review of all but the most complex nominations.

The final recommendation addresses the practice of holding formal confirmation hearings. We believe:

The Senate should adopt a rule that permits nominations to be reported out of committee without a hearing, upon the written concurrence of a majority of committee members of each party.

For most of American history, nominations were reported to the floor of the Senate without any formal hearings by its committees. The practice of holding hearings began to emerge in the second decade of the 20th century. Even then, it was common for hearings to occur in executive session or without the nominee present. The current practice of formal public confirmation hearings on nearly all appointments, with the nominee present, is a relatively recent development.

But with the growing number of presidential appointments subject to Senate confirmation, a heavy burden falls on the Senate to arrange and schedule hundreds of confirmation hearings each year. Scheduling conflicts often lead to unnecessary delays in confirmation. Many nominations provoke no controversy whatsoever. With the lengthy questionnaires nominees now complete and the individual meetings they typically have with senators and committee staff, hearings are sometimes unnecessary. And public hearings force nominees and staff from the agencies to which they are nominated to spend long hours preparing, usually for questions that are never asked.

Clearly the Senate should hold public confirmation hearings whenever there is a justification for that: unresolved concerns about a nominee's qualifications, a desire by several committee members to engage the nominee in a discussion of his or her future duties, some charge against a nominee that the nominee seeks to rebut. But for a great many nominations, none of these conditions obtain, and confirmation hearings are little more than a time-consuming ritual. We believe that no good purpose is served by these rituals, certainly not one that justifies the delays they often impose on confirmation. It would be better for the Senate to hold public confirmation hearings only when there is a valid reason for so doing. We believe that written expression of that desire from the majority of each party's members on a committee would be an appropriate indication of the need for a public hearing.

Conclusion

A number of the reform recommendations that we are putting forth today would involve changes in the way the White House and executive branch handle the nomination process. Frank Raines will address those suggestions in his testimony.

Let me conclude by saying why I think these recommendations are so important and worthy of your attention. Those of us who are supporting these reform feel strongly that our effort to strengthen and streamline the appointments process truly will enhance good governance.

Nothing perhaps can undo decades of cynicism and deterioration of the appointments process in a moment. Overcoming that painful legacy – and its harmful effects on the quality of citizen leadership in government – will require leaders in both parties to come together to make public service more attractive. We can think of no other issue that deserves bipartisan attention more than the need to renew citizen service as a basic democratic duty.