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Gregg Costa Comments on the Impact of Young Judges in Biden's Appellate Court Appointments

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More than half of President Joe Biden's federal appellate court appointments so far were in their 40s or younger when they joined the bench, the highest share for any modern Democratic president, a Bloomberg Law analysis shows. Picking young judges is a way for presidents to better cement their legacy on the federal court system but can also pave the way for less experienced—and sometimes less vetted—people to secure lifetime positions, former judges and law professors said. "There is something to be said about the wisdom that comes with a longer term of experience and practice," said former judge Paul Watford, who was 44 when he joined the US Court of Appeals for the Ninth Circuit. "I don't see anything good that comes from nominating people to the bench at a very young age, to be frank with you." Bloomberg Law's analysis contains data from the Federal Judicial Center covering judges who received their commissions as of July 16. It shows that while the trend has varied some across administrations, the share of younger judicial picks across the courts has generally grown over time. Less than a third of John F. Kennedy's appointments for appellate and trial courts were turning an age younger than 50 the year they became judges, compared to nearly half of those appointed by Biden and Donald Trump, the data shows. "Pretty much everybody thinks that the reason is that, today, presidents care much more about the ideological predilections of the people on the bench," said Arthur Hellman, a University of Pittsburgh School of Law professor. And when a president cares about that, "you would like, as part of your legacy, to have judges ruling in that way for as long as possible," Hellman said. Roughly 53% of Biden appellate appointees turned 49 or younger during the year they received their commissions, and roughly 21% turned 44 or younger, the data shows. At trial courts, about 22% of Biden appointees were under 45 when they became judges, a figure higher than recent Democratic presidents. Biden's move toward younger judges continues a practice championed by Trump. Nearly two-thirds of the Republican's appellate judges were 49 or younger the year they received their commission—the highest share of any president in modern history. But it has marked "a relatively dramatic shift from prior Democratic practice," said John P. Collins, Jr., a law professor at George Washington University. For comparison, roughly a quarter of Barack Obama's circuit picks, and about 38% of Bill Clinton's circuit judges, were under 50 when they joined the bench. Just 5% of Obama's appellate picks, and about 15% of his choices for district seats, were under 45. Biden's youngest appointments were Jamar Walker on the Richmond federal trial court and Bradley Garcia on the D.C. Circuit, who both turned 37 the year they became judges. Trump's youngest judge was Kathryn Mizelle, who was 33 when she joined the Middle District of Florida. **Trial Courts** Inexperience may be felt more acutely at the district court level, where judges have to make quick solo decisions on evidence presented during trials, former judges and law professors said. At the circuit court, cases are generally heard in panels of three, which allows for a more deliberative process. Judging on trial courts is "much more about exercising judgment and discretion, where I think experience matters the most," said Gregg Costa, a former judge on a Texas federal trial court and later on the Fifth Circuit. He was was 39 when he first joined the federal bench. "You can't cause damage on your own on the court of appeals. On the district court, in terms of what happens in your courtroom everyday, you're completely unchecked," said Costa, an

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Obama appointee to both courts who's now in private practice. Some younger district judges have already generated controversy in a short time. Judge Aileen Cannon, a Trump appointee who joined the Southern District of Florida when she was in her late thirties, has drawn scrutiny over her handling—and recent dismissal—of criminal charges against Trump over his treatment of classified documents. Cannon wrote in her Senate questionnaire when nominated that she had tried four cases to verdict in jury trials during her roughly seven years as a prosecutor. And Joshua Kindred, who was 42 when he became an Alaska federal judge in 2020, recently resigned after he was found by a judiciary council to have sexually harassed his former clerk. Kindred told officials investigating the misconduct he was "overwhelmed with his job," according to an order detailing the misconduct. Asked about Kindred's selection, Sen. Lisa Murkowski (R-Alaska) said this month the Trump administration "was very clear in saying they wanted judges, or they wanted nominees, who were younger." She also noted Kindred wasn't highly rated by the Alaska Bar Association, in part because he hadn't practiced law long and wasn't "as well-known amongst the broader bar." While someone of any age can engage in misconduct, there is a "greater risk" that younger people suddenly tasked with managing the equivalent of a "small law office" could abuse that authority, Costa said. "With less maturity, I think there is more risk that people abuse the immense power that comes with being a federal judge," Costa said. Selecting younger judges can also sometimes mean there is less of a record for senators to vet, said Caroline Fredrickson, a senior fellow at the Brennan Center for Justice, a progressive nonprofit. "You certainly could have a judge of her age who is competent and interested in following the law," Fredrickson said, referring to Cannon. "But I think it's harder to determine when someone is of the mind to be a pure ideologue when they have that much less of a paper trail." Michael Waldman, president of the Brennan Center, has called Cannon's ruling dismissing charges against Trump a "truly radical decision." **Other Costs** There are some benefits to selecting younger judges. It creates a deeper bench of younger people with years of experience on the bench in the event of a Supreme Court vacancy, said Collins. Younger judges may also be more "attune to the current culture" and have more energy to handle heavy workloads, Hellman said. Stiil, former judges said it can come at a cost. Watford, now in private practice, hadn't served as a judge before Obama tapped him for the nation's largest appeals court, and he said he would've benefited from more years of experience as an attorney. He recalled his first few years on the bench were "a little bit overwhelming." In some cases he heard in his early years as judge, he "would have probably reached a different outcome" had he considered them later in his career "with more wisdom under the belt." Dale Ho, who was in his mid 40s when appointed by Biden to the Manhattan federal trial court last year, said at a recent bar association event that it has "been quite a learning curve." He cited "the cadence of the job, the mechanics of the court, the expectations of litigants in areas that I don't have a lot of experience in." By prioritizing age, presidents could also miss out on potential candidates with years of experience deemed too old. "I have friends who are interested in being federal judges, and they're like, 'Oh, I'm 55, I'm too old now,'" Costa said. "When you're so focused on age, and they have to be in their 40s, let's say, you're eliminating some incredibly talented and experienced lawyers." Some younger Obama-appointed judges, like Costa and Watford, have also begun to depart for corporate law firm jobs before they become eligible for retirement, undercutting any potential efforts by presidents to secure the seat for longer "It should give presidents pause, and I think will give presidents pause, about nominating these younger people because the president wants his or her ideological legacy to extend for as long as possible," Hellman said. *Reproduced with permission. Copyright July 24, 2024, Bloomberg Industry Group 800-372-1033*
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