



Trump Is Chipping Away At Obama's Remade Federal Courts

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For the 179 active court of appeals judgeships, where much of the action is, the pace of change doesn't mostly depend on the White House's or McConnell's intentions. Instead, it is set mostly by the happenstance of which older judges create vacancies by taking senior status, a choice that's up to them.

Of the 13 circuits, only one has undergone any real partisan lurch since January 2017: the 11th (Georgia, Florida, Alabama), which went from eight Democratic appointees and three Republicans to a 6-6 tie. (I am indebted to my Cato Institute colleague Ilya Shapiro, who keeps a running tally of these.) But keep in mind, in January 2009, when Obama first took office, the 11th was 7-5 split in favor of Republican appointees. Trump didn't "reshape" the 11th, he "unshaped" what Obama did.

The influential Second Circuit, which includes New York, has two vacancies and might soon approach near-ideological balance, with Democratic appointments holding just a 7-6 majority. But the Second is known as an unusually collegial circuit that avoids partisan divisions where it can. The Third (New Jersey, Pennsylvania) may be evolving from a small Democratic to a small Republican edge.

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