



Trump is about to land his 200th judge, a lasting legacy poised to reshape U.S. law

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June 18, 2020

Justin Walker epitomizes the conservative judicial project. He became a federal judge at 37 with sterling right-wing credentials and no trial experience. Eight months later, he has been promoted to the powerful U.S. Court of Appeals for the D.C. Circuit, a frequent feeder to the Supreme Court.

Walker's confirmation Thursday by a Senate vote of 51-42 puts President Donald Trump one shy of his 200th judicial confirmation, which is teed up for next week. It's a number not achieved by any president at this stage of his administration in four decades.

The meteoric rise of Walker, a Harvard J.D., was aided by his Kentucky ties to Senate Majority Leader Mitch McConnell, a family friend for whom he once interned, and his outspoken conservatism — just two years ago he called the 2012 Supreme Court ruling to uphold Obamacare "catastrophic."

"He's sort of the classic case. They've designed their perfect judicial nominee: He's young, white, male and incredibly conservative with a record of activism to back it up," said Chris Kang, a co-founder of the progressive group Demand Justice and former deputy counsel to President Barack Obama.

"This is all part of the broader Republican plan to take politically minded people and put them into judgeships, thereby making sure that the rulings that come out are going to be more political, more partisan and less committed to the rule of law," Kang said.

The push to install young and ideologically rigid judges, spearheaded by the Federalist Society, a network of conservative lawyers and activists, is poised to steer the law rightward — on cultural issues like abortion rights and civil rights to the economic policy rooted in the authority to legislate and regulate.

Trump has been something of a bystander in his own towering judicial legacy, delegating the task to McConnell and activists on a mission to curtail legislative and regulatory authority. Most

of his nominees are in their 40s or 50s, while some are older, and others, like Walker and 4th Circuit Judge Allison Rushing, are in their 30s.

"That impact will last generations," said David McIntosh, a co-founder and board member of the Federalist Society who runs the conservative group Club For Growth. "It's one of the most, if not the most, significant achievements of the president."

McIntosh said Trump's picks are true believers in Justice Antonin Scalia's philosophy that "judges should be bound by the original intent of the Constitution," referring to the conservative icon who helped steer the legal debate to the right during his three decades on the Supreme Court. Scalia died in 2016.

The judges were picked as part of an ideological war against the progressive vision of a "living Constitution," a belief that the document was crafted with broad language to adapt to changes in society that the framers could not have foreseen.

While liberals were relieved this week by two Supreme Court decisions, one that upheld LGBTQ workplace rights and the other temporarily keeping alive the Deferred Action for Childhood Arrivals program for young immigrants, conservative legal experts said the two decisions were narrow and don't set back the movement's larger goals.

In total, Trump has appointed more than one-fifth of the entire judiciary, which may exceed one-fourth this year. While his Supreme Court picks, Neil Gorsuch and Brett Kavanaugh, have solidified a slim 5-4 conservative majority, his impact on federal circuit courts has been enormous. He has flipped the majority for Republicans on three circuits, which have the last word on a vast majority of federal cases.

The Senate is poised to confirm Trump's 53rd circuit judge next week. Obama landed 55 circuit judges in all of his eight years.

Trump "realizes he's not a lawyer and that, unlike in some other areas, judges have gotten continually good press for him for his base," said John McGinnis, a constitutional law professor at Northwestern University's Pritzker School of Law. "So it's not surprising that he isn't changing a successful strategy. He sees that it's working."

McConnell has made judges the Senate's top priority, scorching various obstacles in his path. He has eliminated the "blue slip" courtesy that lets home-state senators hold up circuit court nominees. He nuked the Supreme Court filibuster after Democrats used it to try to block Gorsuch. He has stiff-armed senators with threats to work through holidays. And he has soldiered on under the radar as crises like the coronavirus pandemic or Trump's various self-inflicted controversies dominate the headlines.

McConnell's actions represent the latest escalation of a judicial war that dates back decades. He warned Democrats in 2013 that they would regret eliminating the 60-vote threshold for lower court judges to confirm stalled Obama nominees.

Roger Pilon, a Federalist Society member and a constitutional scholar at the libertarian Cato Institute, said the judges are "far and away" Trump's biggest accomplishment. The new crop of judges see the Constitution as "a document of law," he said, and not "a political document and empty vessel to be filled by transient majorities."

"We are today in a world of two fundamentally different conceptions of the Constitution, and the people that Trump has been nominating and that the Senate has confirmed are deeply informed about this contrast," Pilon said. "And they almost entirely stand on one side of it, and it's not the side that the Democrats on the Senate Judiciary Committee stand on."

"That's why the battle has been so vicious," he said.

Liberal and conservative experts say the Trump-appointed judiciary has the potential to push American law rightward on many consequential issues, including religious exemptions, campaign finance, guns, affirmative action, civil rights and abortion rights.

Another cause conservatives are optimistic about is scrapping the doctrine of "Chevron deference," which would restrict the power of federal agencies to make rules, a tool that progressives often rely on.

Pilon said the goal is "to start rolling back the modern administrative state, the executive state." He said a conservative judiciary can also chip away at broad federal powers rooted in the New Deal era that imposed economic rules and created safety net programs like Social Security and Medicare.

"Economic liberty, in short, is an area where these Trump judges are going to be very important in the future," he said. "Yes, I do see us moving in this direction."

Progressives, however, fear Trump's court picks will haunt them for years to come.

"It's a devastating impact," Kang said. "Not just for the sheer number of judges, but for the fact that they serve for the rest of their lives."