



Judges list binds conservatives to Trump

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President Trump would likely not be in the Oval Office today if not for his pledge to appoint conservative judges to federal courts, particularly the Supreme Court.

Supreme Court appointments were the single most important factor for 27 percent of Trump voters, exit polls showed. This was the top issue for less than 20 percent of Hillary Clinton voters. Many conservatives bet warily on Trump's repeated pledges to nominate judges like the late Antonin Scalia. Even doubters were impressed with his superb pick of Justice Neil Gorsuch for Scalia's old seat.

But the Supreme Court takes only a few dozen cases out of hundreds of thousands that appear before federal courts each year. This is why conservatives should care just as much or more about nominees for district courts, appellate courts and other federal courts.

Trump has now nominated 10 more senior federal judges, who at first glance appear to be excellent. As conservative legal scholar Jonathan Adler put it, "Those of us who doubted Trump would take judicial nominations seriously may have some crow to eat."

The lower courts' importance must not be understated or undersold. It's true that some major issues, such as abortion, depend entirely on the Supreme Court because its precedents are so hardened by time and have filtered down to lower courts. But most crucial issues are shaped in lower courts by their case load.

Religious liberty is one of these. Jurisprudence surrounding the Religious Freedom Restoration Act and the right to free exercise of religion is still taking shape, with the *Little Sisters of the Poor* case still bouncing around in the lower courts. Good judges, the kind who don't see their job as bending the arc of social policy towards elite morality, will be crucial in shaping a reasonable, protective jurisprudence on this issue that respects the rights of all.

A recent ruling in the 4th Circuit, in apparent defiance of a recent Supreme Court precedent, demonstrates that gun rights are also frequently in the hands of lower-court judges.

Another important area where the lower courts will be crucial is redistricting. Democrats, frozen out of the process by their massive election losses in 2010, have been trying ever since to use the courts to game the system. A judge in Wisconsin recently attempted to create an entirely new legal framework for what constitutes a permissible districting map. In the wrong judges' hands, decisions usually turn out to be whatever Democrats want rather than what the law says.

This is why Trump's initial picks for the lower courts are so important. Adler calls them "incredibly strong nominees." Cato Institute senior fellow in constitutional studies Ilya Shapiro agrees that this is an "excellent slate" of judges.

Thanks to the handiwork of former Sen. Harry Reid and Senate Majority Leader Chuck Schumer, there is now no obstacle to these judges' confirmation, barring unforeseen revelations about their personal lives. Democrats in 2013 abolished the filibuster on lower-court nominees, so it simply takes a majority of the Senate to confirm them.

Until 2013, there were still active lower-court judges who had been appointed by Richard Nixon, and more than a dozen of his appointees continue to hear cases as senior judges to this day. There is still one appointee of President Lyndon Johnson's on active duty, in California. This shows that Trump's judicial legacy will endure long after his less-impressive ways have been long forgotten.

He has done well so far to appoint smart, serious, conservative, text-focused jurists. Whatever they think of his other policies, conservatives are unlikely to abandon Trump as long he keeps filling vacancies on the federal bench with disciplined originalists and textualists who understand that their job is to interpret the law, not make it up. So just as his judges list won Trump the presidency, so it is likely to keep it viable for him with political support he could easily squander otherwise.