



'Judges are for life': The Trump court transformation

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Amy Coney Barrett makes three. That's the number of Supreme Court justices President Trump has successfully nominated, in addition to 220 lower federal court judgeships in a single term. In an era in which news cycles are as ephemeral as tweets, even presidential ones, these lifetime appointments make up a legacy that will endure for years to come.

Timing and circumstance allowed Trump to nominate three Supreme Court justices in only his first term. President Richard Nixon was the last, and before that, President Herbert Hoover.

The reelection campaign of Trump's top partner in that legacy, Senate Majority Leader Mitch McConnell, took a victory lap after Barrett was sworn in.

"Working with President Trump, Senator McConnell has fundamentally transformed the federal judiciary by confirming pro-Constitution judges and justices at a record pace," the Kentucky Republican's team said in a statement, boasting that McConnell "leaves no vacancy behind."

Trump has, at times, struggled with staffing, leaving executive branch positions open, shuffling through multiple appointees for a single job, or filling his Cabinet with acting secretaries. But the federal judiciary has been different.

There, Trump was prepared. Recognizing that he didn't have much of a track record with social conservatives ahead of the 2016 election, Trump and his advisers quickly identified judges as an area of importance to this crucial GOP voting bloc. The Supreme Court vacancy created by the death of Justice Antonin Scalia loomed.

Trump not only vowed to replace the conservative icon with someone "in the mold of Scalia," his team assembled and released a list of prospective successors, carefully vetted by the conservative legal networks, reassuring Republican voters unsure about how much they could count on the businessman, reality TV star, and political neophyte to be an ally when it came to the Supreme Court.

The list was a hit with conservatives. Trump outperformed 2016 Democratic presidential nominee Hillary Clinton with voters who cast their ballots based on the composition of the court, according to exit polls. He won 81% of white evangelicals. And he fulfilled the campaign promise once elected.

"The ratio of solid movement originalists to establishmentarian hacks is pretty high," said Ilya Shapiro, director of constitutional studies at the Cato Institute. "The caliber of the nominees is

better than any president in history, in terms of their scholarly credentials, the number of Supreme Court clerks... top-notch people who are already superstars.”

Many give credit to the team that Trump had in place to advise him on judicial appointments. “A premium was put by White House counsel Don McGahn on intelligence and the strength of their convictions,” said a conservative court watcher.

The courts were also a high priority for McConnell. He had held open Scalia's seat for the final year of Barack Obama's presidency, rebuffing Merrick Garland's nomination. After Trump took office, it became apparent during the Obamacare repeal-and-replace fight that legislating wasn't going to be easy, even when Republicans held majorities in both chambers. The GOP's Senate majority was expanded in the 2018 midterm elections, but Democrats took control of the House. Judges were an area that Senate Republicans, in concert with Trump, could make a lasting impact.

Even then, it wasn't always easy. To confirm Justice Neil Gorsuch as Scalia's successor, McConnell and Republicans had to vote to eliminate the 60-vote threshold for ending debate on Supreme Court justices. This filibuster requirement for lower court judges had been terminated in 2013 by the Democrats under the leadership of Harry Reid. “You'll regret this, and you may regret this a lot sooner than you think,” McConnell warned Reid on the Senate floor as Democrats detonated the nuclear option.

Justice Brett Kavanaugh's already contentious confirmation hearings were rocked by Christine Blasey Ford's allegation of sexual assault. But many Republicans were convinced that Democrats were smearing an innocent man. This included Trump. "On behalf of our nation, I want to apologize to Brett and the entire Kavanaugh family for the terrible pain and suffering you have been forced to endure," he said at the White House.

When Barrett was nominated, supporters expected a similarly grueling process. “We want to pray for her family because we know these will be interesting, tough weeks,” Trump adviser Mercedes Schlapp said during a Catholics for Trump conference call. Deputy campaign manager Justin Clark said he was “really, really, really concerned.” But Senate Democrats quickly ran out of ammunition.

Still, Democratic support for Trump's Supreme Court picks steadily eroded. Only three Democrats voted for Gorsuch, compared to the four who voted for Justice Samuel Alito, former President George W. Bush's last nominee. Just one voted for Kavanaugh. None voted for Barrett.

Trump and McConnell nevertheless reshaped not only the Supreme Court but the entire federal judiciary.

“A third of federal circuit judges, that's a really big deal,” Shapiro, a TFAS Law Board of Visitors member, said. “Judges are for life.”