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Kavanaugh confirmation caps Trump effort to put courts under conservatives' control

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The confirmation of Justice Brett M. Kavanaugh to the Supreme Court is the capstone of President Trump's two-year effort to put not just the high court but the entire federal judiciary firmly under conservatives' control.

In addition to shifting the Supreme Court to the right with the successful nominations of Justices Kavanaugh and Neil M. Gorsuch, Mr. Trump has appointed 26 conservative jurists to lifetime service on the influential federal circuit courts of appeals, a pace far exceeding his predecessors.

By comparison, during the first two years of his presidency, Barack Obama appointed 15 judges to the courts of appeals. George W. Bush appointed 16 appellate judges in his first two years, Bill Clinton got 18, George H.W. Bush had 18 and Ronald Reagan appointed 19.

Senate Majority Leader Mitch McConnell said Sunday of Mr. Trump's record number of appeals court judges confirmed, "there will be more before the end of the year."

After the Senate's vote Saturday to confirm Justice Kavanaugh, White House advisers are pointing out the impact of the 2016 presidential election, resulting in a 5-4 conservative Supreme Court under Mr. Trump instead of a 6-3 liberal court under Hillary Clinton.

"There are many people in this country who are thrilled that it's President Trump and not the person who lost the election last time putting these justices on the United States Supreme Court so we can get back to the Constitution," said White House counselor Kellyanne Conway on Sunday on ABC's "This Week."

Mr. Trump's success with the Supreme Court and federal courts of appeals has "now ensured that his substantive legacy will be in the judicial realm," said Ilya Shapiro, a specialist on the Supreme Court and constitutional law at the Cato Institute.

"Having appointed an eighth of all federal circuit judges in less than 18 months — a record 26 to date! — he has had back-to-back Supreme Court appointments," Mr. Shapiro said in an email.

He noted that Justices Ruth Bader Ginsburg (age 85), Stephen Breyer (80), and Clarence Thomas (70) "aren't getting any younger, so we may see more opportunities — at least if the Republicans keep the Senate."

The 13 appellate courts are most often the court of last resort for thousands of cases, with the Supreme Court hearing only about 80 appeals per year. With his appointments, Mr. Trump has already "flipped" two appellate courts — the Sixth and the Seventh, which judge cases in the

Ohio River valley and the upper Midwest — from control by Democratic appointees to Republican appointees.

And many more judicial nominations await. Due largely to Senate Republicans' slowdown of judicial confirmations during Mr. Obama's final two years in office, there are 178 current and future judicial vacancies for the president to fill, including 18 of 179 judgeships on the circuit courts.

Carrie Severino, chief counsel for the conservative Judicial Crisis Network, said Mr. Trump came into office with more judicial vacancies to fill than four of his five predecessors. Mr. Trump has nominated 77 jurists to those seats, with 30 nominees for appellate courts waiting for floor votes.

"Because the Supreme Court is so limited in the cases it accepts, lower court judges are the last word in 99 percent of federal cases," Ms. Severino said. "Placing these outstanding judges on the courts will have a generational impact, ensuring that the Constitution and the laws are followed as written. It will be one of Trump's greatest legacies."

Democrats say the lesson of the bitterly fought Kavanaugh confirmation, in which he surmounted decades-old accusations of sexual misconduct, is for progressives to win more elections.

"We have an election coming up," said Sen. Mazie Hirono, Hawaii Democrat and a member of the Senate Judiciary Committee, on CNN's "State of the Union" on Sunday. "And I said to the women who are justifiably angry, but determined, and I said they should be just focused like a laser beam on the elections, because they have connected the dots. They know that the senators who are making these confirmation decisions are the people who were elected by their voters. And so, as voters, they have a role to play."

Court watchers say Mr. Trump's steady, well-coordinated campaign to appoint conservative judges has already had a significant impact in reshaping the judiciary, after Mr. Obama appointed 329 mostly liberal nominees.

"Trump is doing a remarkable job in bringing back jurists into the federal courts who believe in the rule of law and the Constitution," said Hans von Spakovsky, a specialist on constitutional law at the conservative Heritage Foundation. "They are a startling contrast to the progressive, liberal activists Obama put into the federal judiciary. By the time he left office, Obama had appointed almost 40 percent of all federal judges. And they are the most radical leftists to ever serve."

Mr. von Spakovsky said judges appointed by Mr. Obama "think they are part of the 'resist Trump' movement."

"We have seen them ignore the law in numerous decisions issued against the Trump administration where it is obvious they are acting as advocates instead of neutral jurists, and implementing their policy views instead of applying the law," he said.

The confirmation of Justice Kavanaugh is also the culmination of the work of White House counsel Don McGahn, who led the 20-month effort to vet and recommend judges with heavy input from the conservative Federalist Society and the Heritage Foundation. Mr. McGahn is leaving the White House, a departure that Mr. Trump tweeted unceremoniously weeks before Justice Kavanaugh's confirmation was settled.

The president's campaign to forge a more conservative judiciary still faces hurdles, primarily from Senate Democrats' determined effort to delay nominees whenever possible.

Mr. Trump's "accomplishment is even more impressive when you consider the unprecedented levels of opposition Democrats have mounted to Trump's nominees," Ms. Severino said. "Democrats are doing all they can to weaponize senate procedural gridlock and hold up the confirmation of constitutionalist judges. Even with the priority both President Trump and Leader McConnell have placed on confirming judges, we currently have dozens more judicial vacancies than when Trump took office."

For example, Senate Democrats engaged in 21 hours of "debate" on the nomination in January of William "Chip" Campbell for a U.S. District Court seat in Tennessee. Ms. Hirono was the lone "no" vote against ending debate, which took place at 5:32 p.m. on Jan. 8.

Less than 24 hours later, at 2:17 p.m. the next day, Ms. Hirono was a "yes" vote for Judge Campbell's confirmation, which was approved 97-0.

Similarly, the Senate held 24 hours of debate on the nomination of Thomas Lee Robinson Parker for a district court seat in Tennessee. Ms. Hirono again was the lone vote against ending debate, then turned around the next day and voted for his confirmation, which was approved 98-0.