



FACT CHECK: Has Trump appointed 1 in every 8 circuit court judges?

David Sivak

May 18, 2018

Senate Majority Leader Mitch McConnell claimed that one-eighth of all circuit court judges have been appointed by President Donald Trump.

Verdict: True

Of the 165 active circuit court judges, 21 — or 13 percent — have been appointed by Trump.

Fact Check:

Senate Republicans emerged from a weekly luncheon Tuesday to speak with reporters about their party's recent accomplishments.

“We were all in a celebratory mood as a result of having approved the 21st circuit judge just a few moments ago. That means that one-eighth —one-eighth — of the circuit judges in America have been appointed by Donald Trump and confirmed by this Republican Senate. So we think we're making dramatic progress,” McConnell said.

The Senate had confirmed a string of circuit court judges — six in a single week.

These judges will serve lifetime appointments on the U.S. Courts of Appeals, which are divided into 13 circuits. All told, Congress has authorized 179 judgeships over the years, of which 14 seats are vacant, according to the Administrative Office of the U.S. Courts.

With 21 Trump nominees now confirmed by the Senate, one out of every eight circuit court judges has been appointed by the president.

Appeals courts possess a considerable amount of power. They can overturn the ruling of a district court, and while the Supreme Court has the final say, it only hears about 80 cases a year.

The public often overlooks the mark presidents have on the judiciary. President Barack Obama appointed over one-third of all federal judges by the end of his presidency.

More importantly, he flipped the composition of most circuit courts. Only one out of 13 appeals courts had a majority of Democratic-appointed judges when Obama assumed office in 2009. That number rose to nine by the end of his second term.

Ilya Shapiro, a senior fellow in constitutional studies at the Cato Institute, said that appointments under Trump haven't been as sweeping. "So far, most of the appointments have been low-hanging fruit," he told The Daily Caller News Foundation.

Seventy-one percent of all Trump appointments have been to circuit courts that already had a majority of Republican-appointed judges.

The composition will begin to change as the Senate considers more judges. "The 11th circuit looks to be the one that will be the first to flip," Shapiro said.

Although it's early in the Trump presidency, the Senate has approved circuit judges at a record clip. It confirmed 12 judges during Trump's first year in office, beating a record previously held by Presidents John F. Kennedy and Richard Nixon.

The Senate approved a record low number of district court judges, however.

Democrats have used a Senate procedure called cloture to delay most of the judges put forward by Trump, leading Republicans to prioritize circuit court judges instead. Under Senate rules, Democrats can force 30 hours of debate for each and every nominee. "There's only so much floor time," Shapiro told TheDCNF.

Republicans could amend the rules to limit debate to eight hours on most nominees and two hours for district court judges — as Democrats temporarily did in the 113th Congress — but it's unlikely Republicans have the necessary votes.

The use of cloture as a delay tactic is a byproduct of how partisan politics has become. After Democrats resorted to the "nuclear option" in 2013, lowering the number of votes needed to end a filibuster, Republicans forced cloture votes 85 times over the next 13 months.

Republicans must also consider the Senate tradition of "blue slips," which gives a nominee's home state senators the opportunity to raise objections. The Senate Judiciary Committee weighs heavily whether a senator disapproves, and under some chairmanships, the blue slip process can torpedo a nomination entirely.

The Senate confirmed a federal judge last week despite objections from Democrat Tammy Baldwin, one of his home state senators. "I will not allow the blue slip to be used as a tool of obstruction," Sen. Chuck Grassley, who chairs the Senate Judiciary Committee, wrote in an op-ed shortly after the confirmation. "It is not meant to give a single senator unilateral veto power over nominees for political or ideological reasons."

In total, Trump has appointed 39 federal judges to date, including 17 district court judges and Supreme Court Justice Neil Gorsuch. Obama had 27 nominees approved at this point in his presidency, while President George W. Bush had 57 confirmed.