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Keep the judicial nominees rolling

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Whatever's happening with James Comey's testimony, Donald Trump's Twitter account or congressional inaction on Obamacare repeal, tax reform or much of anything else, from where I stand all that is #fakenews designed to distract your eyes from the prize: we have more judicial nominees! In an echo of how the 21 contenders for the Supreme Court vacancy were announced during the campaign, on top of last month's stellar list of 10 lower-court nominees come 11 more, including three circuit court judicial candidates: Justice Allison Eid of the Colorado Supreme Court to fill Neil Gorsuch's vacant Tenth Circuit seat; North Dakota District Judge Ralph Erickson for the Eighth Circuit; and Professor Stephanos Bibas of the University of Pennsylvania Law School for the Third Circuit.

Of those 11, I know three. Eid, a former clerk for Justice Clarence Thomas, is a thoughtful and intellectual jurist much in the mold of her former boss. Bibas is one of the top criminal-law scholars in the country with whom I've worked professionally and had a drink personally; he'll be outstanding but leaves a gaping hole as faculty adviser for Penn's Federalist Society chapter. And then there's Stephen Schwartz, an old friend who was a few years behind me at the University of Chicago Law School and who's been nominated to the U.S. Court of Federal Claims. He'll be terrific.

If the other eight are of the same caliber as these three (and the previous 10) – and we have no reason to think otherwise given that the administration's nominations staff and advisers are the same – then this is the sort of #winning of which I won't ever tire.

The only curiosity is that again there's no mention of Justice Don Willett of the Texas Supreme Court – and indeed no nominees to the Fifth Circuit at all. As Hugh Hewitt has pointed out, of the 11 original SCOTUS short-listers, five were state judges. Three of them have now been nominated to the federal appellate courts. The two remaining are Tom Lee of Utah (which has no current vacancies) and Willett (and Texas has two vacancies). Moreover, Willett was apparently one of the five or six finalists for the seat that Gorsuch filled, and is close to Texas Senator Ted Cruz. So you'd think he'd be a shoo-in.

Now, I've speculated about the possibility of some grand bargain whereby two other worthies get the Fifth Circuit slots but Willett goes to the high court whenever Justice Anthony Kennedy

decides to retire. But that's pie-in-the-sky because so many other stakeholders are involved at that point.

In the meantime, the White House counsel's office should just keep these black-robe orders coming.

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