

Townhall

Confirmation Parade: GOP Senate Approves Two More Trump Circuit Court Judges

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If you want me to stop harping on the importance of this issue, you're out of luck. It's the most important battle front in the midterm elections, by a long shot. On Thursday, the Senate confirmed two more of President Trump's nominees to serve on an influential appeals court -- both to the Fourth Circuit, in this instance. Here are the vote totals:

These approvals marked the 25th and 26th confirmations of circuit court judges during this presidency; dwarfing the number of confirmed nominees achieved by Trump's immediate predecessors at this stage of their respective first terms. As the news media obsesses over the latest drama from Omarosa, the presidential ambitions of Stormy Daniels' attorney, and other firestorms of the day, Trump and Senate Majority Mitch McConnell are quietly reshaping the federal judiciary in ways that will resonate for many years to come. The *Washington Post* is the latest mainstream outlet to chronicle these unsexy yet deeply impactful developments, which the piece notes are transpiring without much "fanfare:"

While much of the focus has been on Kavanaugh and Justice Neil M. Gorsuch, the Senate's rapid approval of appellate judges is likely to have its own broad impact on the nation, as the 13 circuit courts will shape decisions on immigration, voting rights, abortion and the environment for generations. **For McConnell, this is the culmination of a years-long gambit that started with stymieing President Barack Obama's judicial nominees, most notably Supreme Court choice Merrick Garland**, and creating a backlog of vacancies on the nation's highest courts. Trump's 2016 election enabled McConnell (R-Ky.) to cement a legacy of judicial confirmations that is likely to be felt long after the two men leave office. The Republican leaders are also trying to use judicial nominations to energize conservative voters, who party leaders worry will sit out the midterm elections. There are 179 authorized judgeships for the U.S. Court of Appeals. **With 24 confirmations and 13 vacancies to fill, Trump and the Republicans have the power to install more than 20 percent of the judges on the nation's second-highest courts.**

The Post may need a brief history lesson. The present situation most certainly did not *start* with McConnell's "years long gambit" of blocking Obama nominees. Republicans' hardball tactics in the Obama years were retaliatory exercises, following unprecedented Democratic obstructionism. Democrats fired back by abolishing the judicial filibuster in 2013, the latest unilateral escalation in the intensifying confirmation wars of recent decades. It's *that* precedent -

- the 'Reid Rule' -- that McConnell has been remorselessly exploiting during the Trump presidency.

The Garland maneuver was another instance of force-feeding Senate Democrats their own medicine. Democrats may not enjoy being subjected to their own methods, but perhaps they should have more carefully considered such consequences when they embraced their sundry power grabs. Meanwhile, the LA Times examines whether Trump and company will finally turn their gaze to significantly altering the ideological composition of the notoriously left-leaning Ninth Circuit Court of Appeals, long viewed as an activist outlier in the federal judiciary, and a thorn in the side of conservatives:

There's been a noticeable exception to President Trump's otherwise successful effort to appoint young, conservative judges to the nation's appellate courts: the liberal-leaning U.S. 9th Circuit, which has jurisdiction over California and eight other Western states. **Since Trump took office, the Senate has confirmed only one 9th Circuit judge — in Hawaii — leaving seven openings...And Trump has yet to even nominate anyone for the three vacancies in California, partly because of a standoff with Sens. Dianne Feinstein and Kamala Harris.** That's a stark contrast to Trump's record on appointments of appeals court judges elsewhere in the country...Now, however, there are signs that the administration is beginning to set its sights on the 9th Circuit, likely triggering a bruising fight with Democrats...

The precedent of breaking with the blue-slip tradition showed that Trump and the Republican-led Senate were ready to adopt a tougher stance, which has deep implications for the 9th Circuit. Four of the nine states the circuit covers have two Democratic senators. Why the administration and Senate leadership are hardening their approach now is unclear. One possibility, however, is that Trump is simply running out of vacancies in other circuits. "They've been focusing on lower-hanging fruit," said Ilya Shapiro, a senior fellow in constitutional studies at the Cato Institute. "After a while there are only so many seats to fill." More than half of the 13 appeals court vacancies remaining nationwide are on the 9th Circuit...**Before Trump took office, the 9th Circuit had 20 Democratic and nine Republican appointees. If Trump filled all the current openings with conservatives, the balance would be 16 Democratic appointees to 13 Republican appointees.**

The most high-profile confirmation battle, of course, is the fight over Supreme Court nominee Brett Kavanaugh, in which the president's opposition has struggled to develop any strong or serious lines of attack. On *Benson & Harf* last evening, Sen. Orrin Hatch (a judiciary committee veteran) did not sound terribly concerned about Kavanaugh's chances -- but leftist Elizabeth Warren, last heard from proposing a stunning, sweeping governmental intervention into the American private sector, is telling the die-hards to keep hope alive:

The only viable chance Democrats to defeat Kavanaugh is to pry loose some GOP support, which has so far looked pretty steady. With left-wing groups blanketing Maine's airwaves with messages targeting Republican moderate Sen. Susan Collins, I'll leave you with a conservative organization's counter-point spot: