

THE D.C. CIRCUIT: REBUTTING SENATE REPUBLICANS

Even though there are currently three vacancies on the 11-seat D.C. Circuit Court of Appeals, Senate Republicans have signaled that they plan block any additional D.C. Circuit nominations made by President Obama. Sen. Grassley, the leading Republican on the Senate Judiciary Committee, has proposed legislation that would strip the number of judges on the D.C. Circuit from 11 to 8, thereby denying President Obama the opportunity to appoint any new judges to the court, and creating an even bigger backlog of cases on this important court. **Here are the facts you need to know:**

SEN. GRASSLEY'S PROPOSAL IS PURE PARTISAN POLITICS AND NOT BASED ON FACT

- Senator Grassley's proposal is to weaken the DC Circuit Court by eliminating three seats, just so President Obama can't fill them -- even though these are the same seats that these GOP senators helped fill with ideologues nominated under Bush. Grassley simply wants to impose his extreme political ideology on the American people and will weaken the nation's second most important court to do so.
- The hyper-partisan bill would slash nearly 30% of the seats on the D.C. Circuit without any evidence that cuts to this important court is warranted. The proposal ignores the fact that Congress previously authorized 11 judgeships on the D.C. Circuit Court of Appeals based on the number of cases the court receives and the complexity of those cases. The nonpartisan Federal Judicial Conference that is chaired by Supreme Court Chief Justice John Roberts recommended that the D.C. Circuit should continue to have 11 judgeships.¹
- Although Sen. Grassley claims there isn't enough work on the D.C. Circuit compared to other circuits, his math is fuzzy and the argument ignores the complexity of the cases to score partisan points. Sen. Grassley claimed there are only 108 cases per judge on the D.C. Circuit. According to the Administrative Office of the Courts, however, there are 1,419 pending cases split among eight judges, which adds up to more than 177 cases/judge.

THE GRASSLEY PROPOSAL IS HYPOCRITICAL AND AMOUNTS TO A PARTISAN FILIBUSTER

- This effort is opposition for opposition sake and another example of partisan Republicans' attempt to shut down the federal government.
- Although he opposes President Obama's nominees, Sen. Grassley had no problem confirming judges to fill the tenth and eleventh seats on the D.C. Circuit when George W. Bush was president. In 2005, Grassley voted to confirm Judges Janice Rogers Brown and Thomas Griffith, the tenth and eleventh judges at the time, to the D.C. Circuit. The caseload per authorized judge then (109) was smaller than it is now (129).²
- Changes in the number of federal judgeships usually begin at the beginning of a new presidential term to avoid taking action. Senator Grassley admits that this bill ignores that policy and is intended to strip the President of his constitutional duty to appoint federal court immediately.³
- Senator Grassley had no problem adding judges to courts with caseloads lower than the DC Circuit
 - In May 2013, the Senate confirmed Jane Kelly (from Grassley's home state of Iowa) to the 8th U.S. Circuit Court of Appeals just 34 days after her approval by the Judiciary Committee. That court has the lowest caseload per active judge of any circuit court in the country. Grassley did not raise any concerns over whether that vacancy had to be filled because of a workload concern. Why is this argument suddenly relevant only with the D.C. Circuit?
 - Similarly, Robert Bacharach, supported by both Republican Senators from his home state of Oklahoma, was confirmed to a seat to the 10th U.S. Circuit Court of Appeals last year, which hears far fewer cases than the D.C. Circuit.

THE D.C. CIRCUIT HEARS COMPLEX, TIME-CONSUMING CASES AND NEEDS A FULL PANEL OF JUDGES.

- The D.C. Circuit hears an unusually large number of major regulatory and national security cases, many of which require very specialized legal research, involve intensely long records, and take more time for a judge to process than four or five normal cases heard in other circuits.
 - The caseloads outside of the D.C. Circuit include many routine sentencing, immigration and other cases of the kinds that are often dispatched with in brief orders drafted by staff attorneys (who then have these orders approved by judges). The D.C. Circuit, by contrast, hears far fewer of these easy cases that require very little work on the part of judges.
- As former D.C. Circuit Chief Judge Pat Wald -- who served on that court for more than twenty years -- has explained: "The D.C. Circuit hears the most complex, time-consuming, labyrinthine disputes over regulations with the greatest impact on ordinary Americans' lives: clean air and water regulations, nuclear plant safety, health-care reform issues, insider trading and more. These cases can require thousands of hours of preparation by the judges, often consuming days of argument, involving hundreds of parties and interveners, and necessitating dozens of briefs and thousands of pages of record -- all of which culminates in lengthy, technically intricate legal opinions."

ELECTIONS HAVE CONSEQUENCES AND PRESIDENT OBAMA HAS A CONSTITUTIONAL OBLIGATION TO BRING THE D.C. CIRCUIT TO FULL STRENGTH

- President Obama, just like every other president before him, has the constitutional obligation to fill judicial vacancies, the number of which is determined by law passed by Congress. Grassley's proposal to strip the D.C. Circuit of seats is akin to "reverse court packing" intended to strengthen his partisan ideals and maintain a conservative D.C. Circuit Court.
- President Obama is the first president since Woodrow Wilson to go a full term without getting a single nominee confirmed to the D.C. Circuit.
- Every other president since Jimmy Carter has appointed at least three judges to the D.C. Circuit. Ronald Reagan: 8 confirmations; George H.W. Bush: 3 confirmations; Bill Clinton: 3 confirmations; George W. Bush (43): 4 confirmations.

¹ <http://www.leahy.senate.gov/press/senate-votes-to-confirm-kelly-to-eighth-circuit>

² On March 31, 2005 -- the date closest to the confirmations of Brown and Griffith for which these figures published by the U.S. Courts exist -- there were 1,313 cases pending in the D.C. Circuit, which at the time had 12 authorized judgeships, or 109 cases per authorized judge (the metric used by Senator Grassley). As of December 31, 2012, there were 1,419 pending cases in the D.C. Circuit, or 129 cases per authorized judge, the figure cited by Senator Grassley as so low that three judgeships should be eliminated.

³ http://www.grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=45436