



America Needs Great Judges

After Historic First Year, President Donald J. Trump's Supremely Qualified Judicial Nominees Stuck in the Swamp



JUNE 2018

UNITED STATES JUSTICE FOUNDATION

KEY FINDINGS



- After a historic first year of reforming the judiciary, President Donald J. Trump's supremely-qualified judicial nominees are now stuck in the swamp.
- Democrats are politicizing the independent judiciary with excessive delays of a diverse cohort of judicial appointments – including nominees considered “well-qualified” by the American Bar Association and even those registered as Democrats.
- Swamp politics are harming the American people by delaying the swift and independent administration of justice.

PROMISE KEPT: TRUMP NOMINATES CONSERVATIVE JUDGES TO BENCH



- As a presidential candidate, Donald J. Trump repeatedly promised to appoint conservative judges to the federal bench. President Trump has already delivered on this campaign promise.
- The United States Justice Foundation concludes that President Trump is on track to match or surpass Ronald Reagan's exemplary judicial record.

BY THE NUMBERS



- 147:** **Vacancies** Currently in the Federal Judiciary
- 87:** **Obstructed** Nominees Not Given Vote
- 42:** **Confirmed** New Trump Judges



CAMPAIGN 2016: CANDIDATE TRUMP ON JUDICIAL NOMINEES

Donald Trump reinvented modern presidential politics with his innovative and unconventional campaign. His approach bypassed the elite gatekeepers and spoke directly with the American people.

Openness & Accessibility: Speaking Directly to the American People

As part of his unprecedented openness and accessibility, candidate Donald Trump outlined his philosophy for judicial appointments in an extraordinary fashion: using Twitter to communicate clearly and directly with the American people.

“If I win the Presidency, we will swamp Justice Ginsburg with real judges and real legal opinions!” candidate Trump tweeted in one Tweet representative of his directness and accessibility. (Schleifer, 2016)

“Great Judges, Conservatives, All Picked by Federalist Society”

Trump promised to appoint conservative judges reviewed and supported by the Federalist Society. “We’re going to have great judges, conservative, all picked by the Federalist Society,” Trump promised during a June 2016 interview on Breitbart News radio. (Harloe, 2017)

Known as “a breeding ground for conservative legal thinkers,” (Hurley, 2016) the Federalist Society is a group of conservatives and libertarians that support freedom, constitutional principles, the separation of governmental powers, and “that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be.” (Studies, 2018)

Unprecedented: Trump Released List of Potential Judicial Nominees

Republicans have long been frustrated by GOP judicial nominees masquerading as constitutional jurists only to be exposed as far left judicial activists once appointed. In an effort to restore confidence in the nomination process, after the death of Antonin Scalia, Trump took the extraordinary and unprecedented step of releasing a list of judges he would consider for the Supreme Court, stating that they were “representative of the kind of constitutional principles I value”. (Gambino, 2016) All were affiliated with the Federalist Society. (Hurley, 2016)

Even News Media Acknowledge Trump's Judicial Openness



“Donald Trump has been unusually explicit about his judicial preferences,” wrote lawyer Jeffrey Toobin, a staff writer at The New Yorker and the senior legal analyst for CNN. “All were conservative, all were sitting judges, and many would surely appear on the lists of other prominent Republicans who might lead their Party.” (Toobin, 2016)



TRUMP’S TWEETS ABOUT JUDICIAL PHILOSOPHY & NOMINATIONS

[June 27, 2013: Private Citizen Donald Trump](#)


Citizen Trump identifies trend of GOP judges betraying constitutional principles as activist judges.

 **Donald J. Trump** 
 @realDonaldTrump Follow 

Why do we always know how the four liberals are going to rule but have to think about which side the Republican judges will go.

9:09 AM - 27 Jun 2013

144 Retweets 95 Likes 

 97  144  95

[July 13, 2016: Candidate Donald Trump](#)

Candidate Trump promises real alternative to liberal justices.

 **Donald J. Trump** 
 @realDonaldTrump Follow 

If I win the Presidency, we will swamp Justice Ginsburg with real judges and real legal opinions!

3:28 PM - 13 Jul 2016

7,490 Retweets 23,861 Likes 

 5.2K  7.5K  24K


[April 19, 2018: President Donald Trump](#)

President Trump calls out Senate Democrats for excessive delays of his supremely-qualified nominees.

 **Donald J. Trump** 
 @realDonaldTrump Follow 

...Hopefully the Senate will not leave Washington until our Ambassadors, Judges and the people who make Washington work are approved. The Democrats are Obstructing the process and we need these people approved for the good of our Country!

1:27 PM - 19 Apr 2018

18,828 Retweets 73,017 Likes 

 10K  19K  73K



PRESIDENT TRUMP: HISTORIC FIRST YEAR OF JUDICIAL APPOINTMENTS

Trump: Hands-On With Judicial Appointments

In a sign of his commitment to fulfill his campaign promises, President Donald Trump has demonstrated a high level of hands-on involvement in the selection of his judicial nominees.

"I took the task of this nomination very seriously," Trump said in January 2017. "Judge Gorsuch has outstanding legal skills, a brilliant mind, tremendous discipline and has earned bipartisan support." (Transcripts, 2017)

Trump Delivers with Supreme Court Justice Neil Gorsuch

If he did nothing else, President Trump's conservative judicial legacy would be a success solely based on the confirmation of Justice Neil Gorsuch to the U.S. Supreme Court.

An accomplished conservative, Gorsuch was on Trump's judicial candidate list disclosed during the campaign. (Graves, 2017) Though still early in his tenure, Gorsuch "is quickly proving to be one of the most committed originalists ever appointed in modern times." (Klukowski, 2017)

**Los Angeles
Times**

"One year into his presidency, Donald Trump is among the most successful presidents when it comes to appointing federal judges."

News Media Forced to Concede: Historic First Year for Trump

President Donald Trump wasted no time in appointing constitutional conservatives to the federal bench. Even his usual critics in the fake news media have been forced to acknowledge the incredible success and historic nature of the President's first year of judicial appointments.

"It's one area where the administration has really been successful, so understanding what's happening is important," said University of Georgia law professor Susan Brodie Haire.

An analysis by the Los Angeles Times, which ran a biased anti-Trump editorial series, (Dumenco, 2017) found "Trump is ranked No. 6 of 19 presidents appointing the highest number of federal judges in their first year."

The socialist publication Mother Jones noted: "By working to install judges with remarkable speed, Trump and his grateful conservative allies are creating a durable legacy that will last long beyond his administration." (Harloe, 2017)



TRUMP COULD RESHAPE JUDICIARY FOR DECADES TO COME

National Review: President Trump Promise Keeper

President Trump's judicial appointments have earned the respect of skeptical conservative judicial scholars. "In the interests of candor and humility," one prominent legal scholar for National Review summed up the attitudes of many, "I must acknowledge that the president and his administration have taken this promise about nominations seriously." (Green, 2017)

Strategic Focus on Appeals Courts First

Recognizing their great power and influence, President Trump has strategically prioritized his administration to begin with the appointment of judges to the 13 regional US appeals courts. In this respect, President Trump has put judges in a position to reverse the worst examples of Obama era regulatory overreach.

These lifetime appointments are considered "an executive's most enduring legacy" (Biskupic, 2018), and in some respects, have a larger impact than the U.S. Supreme Court, which selectively reviews fewer than 1 percent of all appeals. "[C]onfirming Trump's judicial picks could shape the direction of the U.S. court system for decades" (Carney, 2018)



"What makes this a unique opportunity in modern history is the sheer number of vacancies, the number of potential vacancies because of the aging bench, and the existence of a president who really cares about this issue in his gut."

Leonard A. Leo, executive vice president of the Federalist Society

Court of Appeals: Trump Far Outstripping Other Presidents' Records

The Washington Post concedes: "The GOP Senate has confirmed 21 of Trump's nominations for judges to the courts of appeals — far outstripping others presidents' records at this point in their terms, dating back to Reagan." (Waltenburg, 2018)

Trump Has Appointed One-Eighth of U.S. Circuit Judges in America

President Trump's remarkable pace of judicial appointments means that he has now appointed one-eighth of the circuit judges in America. (Totenberg, 2018) "In less than 16 months, President Trump will have secured confirmation for 21 circuit court nominees. By comparison, President Obama's 21st circuit court nominee was not confirmed until October 2011—33 months into his administration." (Senate Judiciary Committee Minority Members Report, 5/10/2018)

AT-A-GLANCE: PRESIDENT TRUMP'S SUPREMELY QUALIFIED JUDGES



Third Circuit: West. District of Pennsylvania
Susan Paradise Baxter

- ✓ Federal Magistrate Judge for U.S. District Court for Western District of Pennsylvania
- ✓ Supported by Home State Senators
- ✓ Written Over 1,300 Opinions
- ✓ Temple University School of Law
- ✓ Rated Well Qualified by American Bar Association



Third Circuit: District of Delaware
Colm F. Connolly

- ✓ Former U.S. Attorney
- ✓ Supported by Home State Senators
- ✓ Clerkship to Judge Walter Stapleton of the US Court of Appeals for Third Circuit
- ✓ Duke University School of Law
- ✓ Rated Well Qualified by American Bar Association



Ninth Circuit: District of Hawaii
Jill Aiko Otake

- ✓ Assistant U.S. Attorney
- ✓ Supported by Home State Senators
- ✓ Clerkship to Justice Simeon Acoba on the Hawaii Supreme Court
- ✓ University of Washington School of Law
- ✓ Rated Well Qualified by American Bar Association

FEARFUL OF TRUMP LEGACY, LIBERALS HAVE EMBRACED POLICY OF OBSTRUCTION

President Trump: Far More Effective than Obama

In the face of unprecedented resistance, President Trump has been more adept at securing confirmations for the most important judicial nominees. Even Senate Democrats' own report highlighted President Trump's impressive record of confirmations dwarfing those of his predecessor. (Committee, 2018)

Reuters Scoreboard:

Trump: 15 vs. Obama: 9

An analysis by Reuters found that Trump's successful confirmation of 15 nominees to fill vacancies on federal appeals courts had bested his predecessor by 66 percent. "Trump's Democratic predecessor Barack Obama won confirmation of nine appeals court judges by the same point in his first term." (Hurley L., 2018)

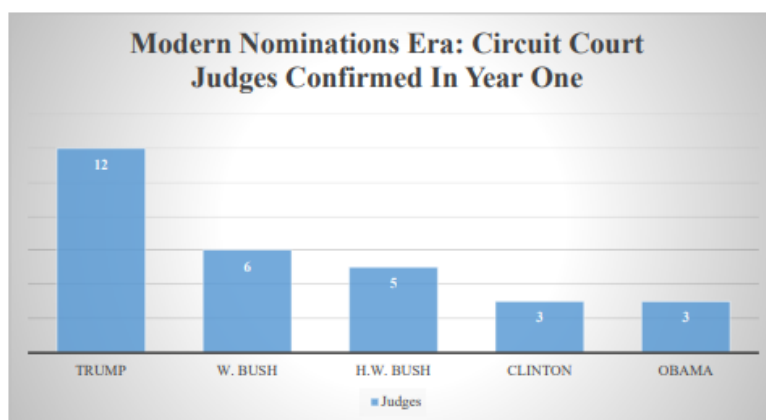


Figure 4
Source: Federal Judicial Center

Political Response: Senate Democrats Have Slowed Appointments

Fearful of President Trump's vigorous appointment pace, Democrats are now politicizing the independent judiciary with excessive delays of a diverse cohort of judicial appointments – including nominees considered "well-qualified" by the American Bar Association and even those registered as Democrats. (American Bar Association, June 4, 2018)

Abuse of Archaic Blue Slip Rule

Democrats have turned to the archaic "blue-slip" rule, which allows any U.S. Senator to block a nominee from their state by refusing to return a sheet of paper to the Senate Judiciary Committee. (Carney, 2018)

Cloture Manipulation: Resulting in Excessive Delays

Additionally, "Democrats have slowed confirmations to a glacial pace" by abusing the cloture process, which adds up to 30 hours of Senate debate for each and every judicial nominee – regardless of their qualifications and support. (Severino, 2018)

"Senators have used this tactic on 89 of President Trump's nominees during his first 16 months in office," notes Sarah Field, the vice president of judicial strategy of Americans for Prosperity. "By contrast, there were just 32 cloture votes during the first terms of the last four presidents combined – a period of 16 years." (Field, 2018)



SWAMP POLITICS: JUSTICE DELAYED, JUSTICE DENIED

Democrats Are “Weaponizing Senate Procedure”

“Under Schumer’s direction, Democrats have embarked on an obstruction campaign to create gridlock in the Senate, impeding or even halting the confirmation of Trump’s nominees,” notes Carrie Severino, former law clerk to U.S. Supreme Court Justice Clarence Thomas and a graduate of Harvard Law School. “Democrats are weaponizing Senate procedure in an attempt to run out the clock on the Trump administration.” (Severino, 2018)

Historic Delays Processing Nominees Compared to Prior Administrations

According to an analysis by the Washington Post, “The Senate is moving more slowly than in the past.” President Trump’s judicial nominees take an average of 190 days to receive Senate confirmation, which the Post found to be “appreciably longer than previous presidents’ records.” (Waltenburg, 2018)

Bill Nelson’s Flip-Flop

Perhaps the best example of Democrat obstruction is demonstrated by Florida Democrat Senator Bill Nelson. Months after announcing his support for one judicial nominee, Nelson inexplicably changed his mind. (Bill Nelson flips, says he’ll oppose Trump nominee for federal bench, 2018)

Democrat Obstruction Harming the American People

Ultimately, Democrat obstruction of President Trump’s nominees harms the American people by delaying the swift and independent administration of justice. “What makes this a unique opportunity in modern history is the sheer number of vacancies, the number of potential vacancies because of the aging bench,” points out Leonard A. Leo, executive vice president of the Federalist Society. (Lehman, 2017)

Solution: Lankford Proposal for Timely Consideration of Nominees

One proposal that could resolve the excessive delays of President Trump’s judicial nominees has been proposed by U.S. Senator James Lankford of Oklahoma, which would provide for a reasonable amount of debate over judicial nominees. Experts say this proposal “would help resolve a vacancy crisis that threatens the ability of federal courts to provide justice in a timely fashion.” (Persons, 2017)

Trump's Judicial Appointments



■ Confirmed (22.34%) ■ Obstructed (42.55%)
■ Vacant, No Nominee (35.11%)

**Table 1: Obstructed Trump Nominees: Approved by Senate
Judiciary Comm., Not Yet Confirmed by Full Senate**

| Circuit Court | District | Nominee | Reported |
|-------------------------|--|---------------------|-----------------|
| Third Circuit | District of Delaware | Maryellen Noreika | 3/15/2018 |
| | | Colm Connolly | 3/15/2018 |
| | Western District of Pennsylvania | Marilyn Horan | 2/15/2018 |
| | | Susan Baxter | 2/15/2018 |
| Fourth Circuit | Eastern District of North Carolina | Thomas Farr | 1/18/2018 |
| Fifth Circuit | Eastern District of Louisiana | Barry Ashe | 2/8/2018 |
| | Western District of Louisiana | Michael Juneau | 1/18/2018 |
| | Northern District of Texas | Matthew Kacsmayk | 1/18/2018 |
| Sixth Circuit | Eastern and Western District of Kentucky | Claria Boom | 12/7/2017 |
| | Middle District of Tennessee | Eli Richardson | 1/18/2018 |
| | Western District of Tennessee | Mark Norris Sr. | 1/18/2018 |
| Seventh Circuit | Southern District of Indiana | James Sweeney II | 2/8/2018 |
| Ninth Circuit | District of Hawaii | Jill Otake | 4/12/2018 |
| Tenth Circuit | District of Colorado | Daniel Domenico | 2/15/2018 |
| | District of Kansas | Holly Teeter | 1/18/2018 |
| | Western District of Oklahoma | Charles Goodwin | 1/18/2018 |
| | District of Utah | Howard Nielson Jr. | 2/8/2018 |
| Eleventh Circuit | Middle District of Alabama | Emily Marks | 1/18/2018 |
| | Northern District of Alabama | Liles Burke | 1/18/2018 |
| | | Annemarie Axon | 1/18/2018 |
| | Southern District of Alabama | Terry Moorer | 1/18/2018 |
| | | Jeffrey Beaverstock | 1/18/2018 |
| | Middle District of Florida | William Jung | 3/15/2018 |
| | Northern District of Georgia | William Ray II | 1/18/2018 |
| | Southern District of Georgia | R. Stan Baker | 1/18/2018 |

Source: American Constitution Society, Pending Nominees, Last Updated June 18, 2018

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ABOUT UNITED STATES JUSTICE FOUNDATION

The United States Justice Foundation is a nonprofit public interest, legal action organization dedicated to instruct, inform and educate the public on, and to litigate, significant legal issues confronting America.

USJF was founded in 1979 by attorneys seeking to advance the conservative viewpoint in the judicial arena.

Since 1980, USJF has submitted testimony to the U.S. Senate on every Supreme Court appointee and sponsored conferences on a variety of important legal issues.

USJF published studies and reports on topical issues and distributes them free of charge to opinion leaders, students and the general public.

USJF has contributed directly and indirectly to legal defense efforts in many celebrated cases involving fundamental conservative principles.

USJF shall not, directly or indirectly, intervene, or participate, in a political campaign on behalf of, or in opposition to, any candidate for public office.

USJF shall not endorse any candidate or contribute money to any candidate for political office.

USJF shall not provide goods or services to a candidate's campaign, raise funds from others in support of or in opposition to a candidate, distribute statements for or in opposition to a candidate, or conduct any other activity that favors or opposes a candidate for political office.

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