



Written by [Bob Adelman](#) on November 13, 2017

McConnell, Democrats Stalling Trump's Conservative Judicial Nominees

Not only have [fewer than half](#) of President Trump's judicial nominees been confirmed by the Senate (the lowest number in the last four administrations), but cloture has been invoked an astonishing 51 times even to get those to the Senate floor for a vote. There were no cloture votes under Bush I and just six during the Clinton administration. Under Obama there were five over eight years.



Cloture was required because Senate Democrats were determined to stall the Republican efforts to fill vacancies with "original-intent" nominees: those who believe their job is to determine what the writers of the Constitution meant when it was being written. This differs from the view that the Constitution's wording can be twisted to mean whatever a judge thinks it means, or ought to mean.

Leonard Leo, the executive vice president of the Federalist Society and informal advisor to Trump, told CBN News that Trump's opportunity to shape the law for the next several generations is huge:

This president has an opportunity to potentially fill as many as 40 percent of the seats on the federal bench. And that will just be transformative.... [Their influence] will last 40, 50 years and will have an enormous impact on the future of our country.

John Malcolm, a vice president of the Institute for Constitutional Government at the Heritage Foundation, suggested several of the people who wound up being on Trump's short list for nominees to the Supreme Court. But the real impact isn't with the Supreme Court but instead with the lower federal courts, which decide the vast majority of cases. While the Supremes take on roughly 80 cases a year, regional federal courts rule on about 60,000 cases every year.

Said Malcolm: "There was a decided leftward tilt by some of these courts during the Obama administration. So I think from a conservative standpoint, getting that shift by the judiciary back in the right direction is incredibly important to the direction of the law. It's the structural Constitution that really protects human freedom and which really preserves human dignity from the heavy-handed nature of the state."

At the moment there are 175 pending nominees waiting for action from Senate committees while another 101 are waiting for a confirmation vote by the full Senate. And the logjam isn't created by just the Democrats, either. Senate Minority Leader Charles Schumer has been fighting to slow down the confirmation by requiring that the Senate invoke "cloture" — i.e., the "nuclear option" whereby just 51 senators can shut off filibusters — which then sets in motion the "30-hour" rule. That rule limits debate



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on any nominee to 30 hours, with no senator being allowed to speak for more than one hour.

This has been successful in slowing the confirmation process to a virtual crawl: only two or three nominees are being confirmed every week. For example, it took two months for the nomination of a non-controversial judge, David Nye, to reach the Senate floor for a vote. When it finally got there, the Senate voted for his confirmation to the U.S. District Court for the District of Idaho, 100-0. If that pace is maintained it will take years for the Senate to complete the task.

But even that is too rapid for members of the left-wing anti-Trump press. David Savage, writing for the *Los Angeles Times*, denounced one of Trump's nominees, Brett Talley, because 1) he had been practicing law for just three years; 2) had never tried a case in a court of law; and 3) was rated "not qualified" by the American Bar Association's judicial rating committee. More annoying was that Talley, who currently serves as President Trump's deputy assistant attorney general in the Department of Justice, had the audacity to denounce the Democratic presidential candidate as "Hillary Rotten Clinton" while (horror of horrors!) supporting the National Rifle Association.

Savage didn't mention that the ABA's judicial rating committee has long been considered a farce. He had to dig deeply into the rotten barrel of apples to come up with a criticism of Talley from an outfit called the Leadership Conference on Civil Rights. This is the hard-left group that was headed by Vanita Gupta, a former Obama administrator with previous tenure at the ACLU.

Savage, to his credit, did explain why Senator Dianne Feinstein (D-Calif.) was so upset about Talley. In a blog post called "A Call to Arms," Talley wrote in 2013 that "the President [Obama] and his Democratic allies in Congress are about to launch the greatest attack on our constitutional freedoms in our lifetime.... The object of that war is to make guns illegal, in all forms." Talley added that the NRA "stands for all of us now, and I pray that in the coming battle for our rights, they will be victorious."

The *New York Times* featured its displeasure at Trump's originalist nominees by printing a screed by Charlie Savage, no perceived relation to the David Savage mentioned above. This Savage disclosed a "secret" meeting that Trump's campaign held several weeks before the election (which, it should be remembered, was heading in Hillary's direction) during which plans were made to name conservatives to the 100 or more judgeships that were open or about to be open thanks to those retiring. As of November 11, the Senate had confirmed just eight appellate judges and Savage didn't like any of them. After all, wrote Savage, Trump had the audacity to select those nominees from lists put together by top people at the Federalist Society and the Heritage Foundation. He couldn't contain himself, writing that these people are seen by conservatives as "legal rock stars who will interpret the Constitution according to its text and original meaning." This would, wrote Savage, "bring the conservative legal movement ... to a new peak of influence over American law and society."

The other reason for the delay in getting Trump's nominees vetted and confirmed is, as noted above, Senate Majority Leader Mitch McConnell (R-Ky.), shown. He is limiting the Senate from considering them by cutting its hours. This has so outraged conservative leaders that 133 of them [wrote McConnell directly complaining](#) that "the slow pace of Senate confirmations is exacerbated by the Senate's continued insistence on working no more than 2½ days a week: arriving on Monday evening for a handful of votes, and departing, on average, by 2:30 pm each Thursday afternoon."

The opportunity to transform the American judiciary toward freedom and away from tyranny won't last forever. It's hard enough for the president to fight intransigent Democrats who are opposing him every step of the way. He now finds that he must fight Republican Senator Mitch McConnell as well.



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Photo of Mitch McConnell: [Senate.gov](#)

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