



Obama vs. GOP on Judicial Nominees

As President Obama faces off against Senate Republicans in a showdown over his abuse of recess appointments, a conflict that has gone to the Supreme Court, Obama has launched a new attack on the opposition party — using Senator Harry Reid (D-Nev., shown) as his proxy — in an effort to target what he views as Republican “obstructionism.”



Last week, the U.S. Senate voted 97-0 to confirm President Obama’s judicial nominee Sri Srinivasan to the D.C. Circuit Court of Appeals, but Senate Republicans made it clear at the time that they will not confirm additional judges to the court because of the court’s light caseload.

But President Obama has decided to nominate three more judges, a move that Senate Republicans are viewing as yet another power grab on the part of the White House, since the D.C. Court of Appeals will be hearing significant cases dealing with two of Obama’s most controversial pieces of legislation: the Affordable Care Act and the Dodd-Frank Wall Street Reform Act. The court is also expected to handle Obama’s attempts to tackle supposed climate change through increased regulations.

The Hill [reported](#), “Republicans view the president’s decision to nominate three more judges to the D.C. Circuit Court of Appeals, the second most powerful court in the nation, as deliberately provocative after they unanimously approved one of his nominees to the court last week.”

Srinivasan’s confirmation brings the D.C. Circuit Court to four Democratic and four Republican appointees. If Obama’s new nominees were to be approved, the court would likely begin to lean Left. With three remaining vacancies to be filled, that is a very real possibility.

Senate Minority Leader Mitch McConnell (R-Ky.) said, “The whole purpose here is to stack the court. So the real issue here, I guess, is he disagrees with the rulings of the D.C. Circuit.”

Recent assertions by Senate Majority Leader Harry Reid seem to support this. Embittered by the Circuit Court’s unwillingness to rehear a case in which an EPA rule had been struck down, and the court’s ruling to invalidate Obama’s NLRB recess appointments, Reid issued an inflammatory accusation. “You have a majority in that court that is wreaking havoc with the country,” Reid fumed on the Senate floor last week.

To get his way, Senator Reid reputedly has been considering changes to the chamber’s procedures for judicial nominees to move left-wing nominees through the Senate confirmation process.

The *Washington Post* [explained](#) that the Democrats may be required to use the “nuclear option” — a change to the current Senate filibuster rule that sets a 60-vote threshold on all judicial and executive branch nominations — in order to get the judges confirmed. Under present rules, unless 60 senators agree on a nominee, senators can filibuster a nominee until the nominee is pulled from consideration. It



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would only take 51 votes in the Democrat-controlled Senate to change the rules so that nominees would be confirmed or denied based on a majority vote. Reid would have done precisely that long ago if he could get enough Democrats on board, but many Democrats are hesitant to implement something that would benefit Republicans if they take control of the Senate and the presidency. Also, if the nuclear option is taken, bipartisanship in the Senate may evaporate.

According to a Democratic aide, senior Democratic senators are encouraging Reid to hold off on addressing filibuster reform until after immigration reform. “The fear is that if he does this before immigration reform is done, then all of the Republicans are going to walk,” the aide tells me.

With Republicans in the Senate agreeing to much of Democratic spending and other liberal issues, such as so-called immigration reform — amnesty — it might be foolish to paint Republicans into a corner where they feel compelled to fight Democratic plans to save face.

Naturally, the president’s actions have found support amongst his loyal Democratic fan base.

“It’s about time,” said George Kohl, senior director at Communications Workers of America. “The Republicans have succeeded in obstructing nominees and find the flimsiest of excuses. By appointing three judges, we’ll cut through that and bring to the surface the key issue, which is their obstructionism.”

And Democratic strategist David DiMartino contends that the president’s decision to name additional nominees is an attempt to reassert his agenda and highlight to the American people the Republicans’ unwillingness to comply. “Certainly the president wants to talk about what his agenda is as opposed to what the Republicans would want him to talk about,” said David Di Martino, a Democratic strategist. “He’s trying to reassert his agenda in the news and he’s doing that by finding out other ways to talk about his agenda and pointing out that Republicans are blocking everything he’s trying to do, from judges to nominees to legislative initiatives.”

But despite the spin, the agenda of the president and the Democrats is clear: change the Senate’s rules.

The Hill explains:

If Republicans use filibusters to stymie the appellate court nominees — along with the nominations of Richard Cordray, Obama’s choice to head the Consumer Financial Protection Bureau, Gina McCarthy, his pick to head the Environmental Protection Agency (EPA), and Tom Perez, the nominee for Labor secretary — Democrats say they will be justified in changing the rules by a party-line vote.

Democrats deny that the maneuver is intended to be a political power play, asserting that the issue is Republican obstruction.

Republicans argue, however, that the judicial vacancies are the fault of the president.

Senate Chuck Grassley wrote an opinion piece for *USA Today* wherein he states, “Only eight of 32 judicial emergency vacancies have a nominee. We can’t act on nominations that haven’t been made.”

All indications seem to point to a July showdown, when Reid is expected to employ the “nuclear option” if Republicans choose to filibuster Cordray, Perez, or McCarthy.

Reid asserts that the nuclear option has not been a viable one in the past because of reluctance on the part of “old bull” type Democrats to utilize it. But he now contends that those opponents are beginning to come around. But this may be only more posturing by Reid to cow Republicans into caving on



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nominees.



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