

If Senate Republicans don't want the majority, they are doing everything exactly right

By **Hugh Hewitt** October 17 at 11:03 AM

The United States courts, the third branch of government laid out in the Constitution, maintains a website that tracks vacancies among its 890 authorized judgeships. That site is continually updated, but for conservative supporters of President Trump most concerned with the judiciary — and they are legion — its scorecard doesn't change often enough.

I've written before that judicial nominations and confirmations are the key metric of success for the Trump "base" and that the greatest impediment to the president's nominees is the so-called blue slip. But if the Senate's "old guard" among the GOP needed anything more than the desire to see originalism return or to vindicate voters' will to prod it to end, once and for all, the anti-constitutional use of the blue slip, former White House chief strategist Stephen K. Bannon has given them that push.

When Bannon declared war on the GOP's Senate majority Saturday at the Values Voter Summit, he was serving notice upon not just Republican incumbents up for reelection in 2018 but every Republican senator enamored of the privileges of the majority that their indifference to party would rob some of their friends of their jobs and every member of the caucus of power.

"We have some of the most qualified people," Trump declared in the White House Rose Garden on Monday, with Senate Majority Leader Mitch McConnell (R-Ky.) at his side. "They're waiting forever on line," he continued. "It shouldn't happen that way. It's not right; it's not fair."

It is not remotely just or even close to "fair" to those nominees; nor is it "fair" for critics of the Senate GOP to lump McConnell in with the obstructionists. It was McConnell, after all, who saved the Supreme Court from a liberal majority through the refusal to hold any hearings for any nominee. McConnell didn't throw in with Sens. Susan Collins (R-Maine), John McCain (R-Ariz.), Lisa Murkowski (R-Alaska) and Rand Paul (R-Ky.), who at different junctures "saved" Obamacare. All sophistry and talking points aside, Obamacare is alive today because the Freedom Caucus in the House and these four senators destroyed first Obamacare repeal's momentum and then its chances at 50 votes in the Senate.

Bannon has a case to make against those legislators. But he is going to make it instead against establishment D.C., and there's a good chance he will bring the house (and the House and Senate) down around him in doing so — and with it every foreseeable future Supreme Court nominee. While McConnell is doing what he can to avoid this, other Republicans have failed to act like a party and free the GOP from the paralysis that has kept it from key goals, most importantly the effort to maintain even the semblance of originalism in the courts.

More than anyone else, Sen. Charles E. Grassley (R-Iowa), chair of the Judiciary Committee and the key defender of the blue slips, methodically frustrates the one offering that establishment D.C. can make to the conservatives in the countryside. The best GOP leader of the Senate of my lifetime is now watching his old colleague toss the long-sought majority on the political pyre because of a love of a tradition that is not even within the formal rules of the Senate.

It is simply inexplicable that any federal-court vacancies could be left unfilled a year from Trump's inauguration. But that's where we are headed, and proponents of the Bannon-fueled rejectionism of GOP incumbents will rightly listen to no explanation for this feebleness. Because there isn't any. If Senate Republicans don't want the majority, they are doing everything exactly right. If they do like their positions of authority, then burn the blue slips and stay in session until every judicial nominee has a hearing and a vote. This isn't complicated. Only the Beltway's barons can make it so, and they will learn a very tough lesson in 13 months if they insist on business their way, and not the way of the framers.

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