



## Opinions

### Trump's massive impact on the federal bench

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By [Hugh Hewitt](#) May 22 at 4:04 PM

Some day, conservative critics of President Trump will have to reconcile their vehement opposition to him with their love of the Constitution. The latter is most definitely benefiting from the president's massive impact on the federal bench, one that extends far beyond [Justice Neil M. Gorsuch](#) on the Supreme Court.

The Supreme Court, though by far the most important court, still only reviews 80 or so appeals court decisions per year. The appeals courts, however, are burdened with massive amounts of decision-making year-round. Federal appeals court judges completed [96,000 case "participations" in 2017](#). (A case participation means that one judge heard an oral argument or reviewed an appeal on briefs. Thus, when a single appeal is heard before a panel of three judges, it is three participations.) Trump has [appointed 21](#) of the 167 current full-time judges and intends to [fill another 20](#) or more vacancies by year end. The president and the GOP-controlled Senate have thus already put one-eighth of the federal appeals bench in their seats. Each of those new appointees — all principled "originalists" in the mold of the late [Justice Antonin Scalia](#) — will have more than 400 participations in 2018 alone. There are 10 more appeals court nominees [in the queue](#) and a dozen other vacancies awaiting nominees beyond those, and Senate Republicans have made these positions their priority (unless there is a retirement on the Supreme Court). With the age of initial appointment dropping and retirement age advancing, we can reasonably expect Trump-appointed judges to average 20 years on the bench. Expect a total of 40 new appeals court judges by the end of Trump's first two years.

To assess Trump's impact, read the [annual report](#) of the U.S. Court of Appeals for the 5th Circuit. The president has already nominated four of the 15 active judges on that circuit and is soon likely to fill the two remaining vacancies. Each active judge has averaged between 144 and 163 opinions per year for many years. We can expect that, if past is prologue, each of the new judges will author about 150 opinions from among the hundreds of opinion-generating cases in which they participate annually.

The Trump judges on the 5th Circuit and their new colleagues on other federal appeals benches across the land will be busy long into the future. Review the math presented above, and extend the trends into the future, including another 20 or so more federal circuit court confirmations expected this year. By 2019, Trump judges will be participating in more than 15,000 decisions every year, and almost all those decisions will be the law of the land. There will be no less than 400 crucial case votes and dozens of signed opinions, each year, every year for most of the Trump judges. If the judges sit for an average run of 20 years on the bench, that's 8,000 key votes per Trump-appointed judge.

The critiques from the #NeverTrump rump have always been heated and sincere, but unbalanced by any appreciation for this remarkable record of repair of the bench. The Third Branch looks today and will look for decades into the future far more originalist because of Trump compared with how it would have been under Hillary Clinton.

Looking forward, I'll bend the famous Carville phrase a bit: "It's the judges, brilliant people" works for me for the midterm message of the GOP. Republicans should run hard on this record from now to the fall and promise much, much more of the same. Trump has not merely nudged the direction of the law, he has turned it decisively back toward limited government, not just through deregulation, but by seating judges inclined to look askance at the progressive idea of a ["living Constitution."](#)

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Hugh Hewitt, a Post contributing columnist, hosts a nationally syndicated radio show and is author of “The Fourth Way: The Conservative Playbook for a Lasting GOP Majority.”  Follow @hughhewitt