



Members of the Senate Democratic Caucus  
US Senate  
Washington, D.C. 20510

Dear Members of the Senate Democratic Caucus,

As we enter the final year of President Donald Trump's first, and possibly only, term, we implore each of you to do everything in your power to force Majority Leader McConnell to live by his own "McConnell Rule" to the judicial nomination and confirmation process and to **cease filling judicial vacancies for the remainder of this presidential term.**

When Donald Trump was sworn into office on January 20, 2017, he famously had a Supreme Court vacancy waiting to fill. This was thanks to unprecedented action McConnell took nearly a year earlier when he imposed the so-called "McConnell Rule" by announcing immediately upon Justice Antonin Scalia's death that the Senate would not consider any nomination by President Barack Obama to fill the vacancy during his last year in office.

As we all know, Senator McConnell was not acting in good faith when he cited the final year of a presidential term as a pretense for his naked, partisan power grab. However, no democracy can survive if its institutions enable one party to routinely operate in bad faith without repercussion or rectification. For that reason, Democrats must hold McConnell to his stated principle and refuse to confirm any more Trump-nominated jurists to the Supreme Court (should there be a vacancy) or any other federal court.

There has been much discussion of the McConnell Rule with respect to Republicans' theft of the Supreme Court. Yet, by focusing only on the Supreme Court, we miss the critical other half of the rule that Senator McConnell established in 2016: no more confirmation of nominees to the Nation's powerful circuit courts of appeal in a presidential election year. According to Russell Wheeler of the Brookings Institute, the Senate's Republican majority did not confirm any of President Obama's circuit court nominees after January 11, 2016. In fact, the Senate confirmed only 2 circuit court nominees in the final two years of the Obama presidency, after Republicans took the majority in the Senate.

Of course, Trump took advantage of the more than 100 judicial vacancies resulting from the McConnell Rule, and filled these vacancies with gusto. The Senate has already confirmed nearly as many Trump circuit court nominees in 3 years—50 nominees—as the 55 nominees it confirmed in the full 8 years of Obama's two terms. According to the *Washington Post*, 1 in 4 circuit court judges is now a Trump appointee and 3 of the 13 circuit courts have flipped from to majority Republican-appointees, many of them far younger than prior confirmed judges.



Alarming, Trump judges include many unqualified and extreme partisan jurists. Republicans have done away with traditional standards meant to ensure that only qualified mainstream judges with the temperament to be judges receive lifetime appointments. The Republican Senate has confirmed nominees who have failed peer review by the non-partisan American Bar Association and has confirmed circuit court nominees without “blue slips” from home state senators, which, prior to Trump, ensured consultation and approval of judicial nominees from a senator’s state.

However specious Senator McConnell’s argument was during Obama’s final year in office, it clearly should apply at least as strongly to Trump—an impeached President who lost the popular vote.

For all of these reasons, the confirmation of all nominations for lifetime appointments to Federal courts should stop during this presidential election year as they did by this time in 2016. For the sake of our rights, our values, and our democracy: turn off the spigot of extreme Trump nominees flooding federal courts and changing law affecting millions of Americans.

Respectfully,

Take Back The Court

350.org

American Federation of Teachers

Committee for a Fair Judiciary (CFJ)

Indivisible

Move On

Presente.org

Progressive Change Campaign Committee (PCCC)