



**A RETROSPECTIVE
OF THE TRUMP
ADMINISTRATION'S
IMPACT ON OUR
COURTS**
2017 - 2020

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Alliance for Justice is a national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society. Since 1979, AFJ has been the leader in advocating for a fair and independent justice system, preserving access to the courts, and empowering others to stand up and fight for their causes. The two pillars of Alliance for Justice are our Justice Program, focusing on ensuring our nation’s courts protect our critical constitutional rights and legal protections, and our Bolder Advocacy Program, focusing on building advocacy capacity among nonprofits and the foundations that fund them.

Executive Summary

For the past four years, Alliance for Justice (AFJ) has been on the front lines fighting Donald Trump's takeover of our courts. During this time, he and his allies in the Senate stopped at nothing to install hundreds of ideological and often unqualified federal judges. AFJ's timely report offers a summary of Trump's transformation of the courts over his four years in office.

The numbers alone tell a scary story. Compared to Obama's total eight years in office, Trump has appointed more Supreme Court justices (three vs. two) and nearly as many appeals court judges (54 vs. 55). He also appointed 170 district court judges. Disturbingly, Trump flipped three different circuit courts of appeals, such that they now have a majority of Republican-appointed judges (seven circuits total are now Republican majority). His judges, moreover, are overwhelmingly white and male, cementing a lack of diversity in these courts even as the country grows increasingly diverse.

These judges were confirmed despite their [harmful records on the issues](#) that impact Americans of all walks of life, from workers' rights to civil rights to immigration to the environment. Trump's judges have demonstrated records of hostility to critical constitutional rights and legal protections; and they have [already imposed](#) their dangerous ideology from the bench.

AFJ's report also highlights the undermining of the Senate's advice-and-consent role on judicial nominations and confirmations. Senate Republicans changed Senate rules and eroded norms, including lowering the confirmation-vote threshold so Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett could be confirmed to the Supreme Court. The Senate confirmed judges in the lame duck after Donald Trump lost reelection. The Senate employed extensive shortcuts and obfuscation, including blocking the release of a vast number of records and truncating an investigation of sexual assault allegations in the Supreme Court confirmation of Brett Kavanaugh. It discarded the century-old "blue slip" rule for lower court nominations, stacked confirmation hearings with multiple nominees to prevent thorough questioning, allowed nominees to mislead the Senate Judiciary Committee by permitting their demonstrably false statements to stand unchallenged, and advanced nominees with American Bar Association "Not Qualified" ratings.

As the Trump Administration ends and the Biden Administration begins, Alliance for Justice is committed to repairing the immense damage done to the independence of our federal judiciary. We have seen some very promising signs as progressives are significantly more energized by the fate of the courts than

ever before. Alliance for Justice has also been planning for the future through its Building the Bench initiative, which has identified a spectrum of diverse lawyers with a demonstrated commitment to equal justice for the next president to appoint.

Introduction

During his four years in office, President Trump has consistently shown contempt for the rule of law and our democracy. He leaves office railing against election officials, spreading unsubstantiated and dangerous conspiracies, and interfering with the peaceful transfer of power. He was impeached for trying to subvert our elections. He has attacked judges who have ruled against him. He has demanded loyalty from law enforcement, ordered investigations into political opponents and the media, undermined independent investigations, and condoned and forgiven illegality by his cronies. In the face of his mockery of constitutional rights, judges rejected and repudiated Trump's actions and policies to an extent unmatched by any president in modern history. In response, Trump attacked the courts themselves by flooding them with unfit judges.

This report briefly summarizes just one of President Trump's assaults on our constitutional values, but perhaps his most lasting legacy: the judges he has put on the federal bench, aided by the Republican Senate's repeated evisceration of norms and rules to jam those nominees through. As the stats below show, Trump has put three Supreme Court justices on the bench and over 50 appellate and 170 trial judges. In eight years, the Senate had confirmed two Obama nominated justices and 55 appellate judges. But these numbers do not tell the full story. As AFJ has closely documented over the past four years, these judges are not on the bench to serve as fair-minded and unbiased jurists, but expressly to advance the Republican Party's dangerous ultraconservative agenda.

The President and his Republican allies have been explicit in their use of judges to impose an agenda on the country that is too unpopular to achieve through Congress: to undermine democracy, entrench Republicans in power, [eliminate the safety net](#), and turn back the clock on rights and protections that Americans now take for granted. As Don McGahn, Trump's first White House Counsel, candidly admitted, the Administration had a ["coherent plan"](#) to pick federal judges who will gut federal laws, dismantle environmental protections, roll back civil rights, and diminish worker and consumer protections. "These efforts to reform the regulatory state begin with Congress and [the] executive branch," McGahn [said](#), "but they ultimately depend on the courts."

AFJ vigorously fought this transformation of the courts. In addition to comprehensive research and reports, we sent joint letters, organized rallies, showed up at hearings in blue shirts, participated in press conferences, and mobilized millions of Americans to fight Trump's judges.

Because of AFJ's advocacy — and that of other groups and people across the country — several problematic nominees were defeated. Ryan Bounds, Thomas Farr, Jeff Mateer, Brett Talley, Gordon Giampietro, Matthew Peterson, Thomas Marcelle, and Damien Schiff were not confirmed to the bench and thankfully are not adjudicating the rights and liberties of others. These defeats have real-world consequences to litigants who will not have their cases heard and rights determined by judges with such disturbing records.

Our work wasn't limited to researching these nominees' records; we also told the stories of the real people impacted by these nomination fights. At stake are not just questions of jurisprudence, legal theory, or arcane and esoteric debates out of dusty books in law libraries, but the concrete well-being of everyday Americans.

That work began with Trump's very first judicial nominee: Neil Gorsuch. We helped tell the story of [Alphonse Maddin](#), the so-called "Frozen Trucker" who Neil Gorsuch would have denied relief to when his employer forced him to choose between keeping his job and saving his own life when he had to abandon his disabled vehicle on a sub-zero night. We also told the story of [Grace Hwang](#), recovering from cancer, who was denied a workplace accommodation when Neil Gorsuch said it was permissible for her employer to force her to choose between her job and her life.

In the four years since, we have continued to tell the stories of the real people impacted by Trump's assault on our courts. AFJ worked to turn out sexual assault survivors to fight Neomi Rao, whose extremely offensive writings blame victims of sexual assault for their own attacks. We partnered with civil rights leaders, North Carolinians, and allies to expose Thomas Farr's background of voter suppression against communities of color. We worked with Native American groups to oppose Eric Miller, who spent his career on the front lines fighting tribal rights. We worked with parents of transgender children to defeat Jeff Mateer after it was discovered he [referred](#) to transgender children as part of "Satan's plan." We worked with teachers to fight the confirmation of Betsy DeVos's right-hand man Stephen Menashi.

This past year, as the nation faced a health and economic crisis due to COVID-19, Republicans in the Senate remained laser-focused on confirming judges rather than providing badly needed relief to the American people. Worse, many of these judges, in earlier stages of their careers, had demonstrated contempt for the health of the American people (indeed, one even said that anyone on Social Security was ["less than a fully mature adult"](#)), and made clear that, if given the opportunity, they would invalidate the Affordable Care Act. AFJ worked closely with health care advocates, nurses, people with preexisting conditions, and parents with sick children to raise the alarm and fight these egregious nominees — Chad Readler, Cory Wilson, Justin Walker Amy Coney Barrett, Stephen Schwartz, and the many others — who would use the courts to take away health care from millions.

Our activism, and that of our Coalition partners, energized the American people. Over 644 groups, 7,000 lawyers, and 400 state and local elected officials opposed Amy Coney Barrett's confirmation, generating hundreds of thousands of phone calls and over three million petition signatures. According to [multiple](#) polls, those who said the appointment of judges was important to their vote, were much more likely to vote for Biden than Trump. Long time advocates for fair courts, including but not limited to civil rights, reproductive freedom, LGBTQ, worker, and environmental organizations, doubled down on their commitment to the fight. In addition, new and growing constituencies, such as health care activists, faith leaders, Native American communities, educators, and sexual assault survivors strengthened their engagement.

Because of our work over the last four years, Alliance for Justice and progressives across the country are positioned to ensure that President-elect Biden prioritizes reversing the damage President Trump and Republicans have inflicted on our justice system. After the election, [we led](#) over 70 groups in demanding the Biden Administration prioritize the courts on day one. And, through our Building the Bench program, working with our coalition partners, we helped identify a broad pool of demographically and experientially diverse lawyers with a demonstrated commitment to constitutional rights and legal protections so there is no delay in appointing them.

Trump's Impact by the Numbers

- The Senate [confirmed](#) 3 Trump Supreme Court justices and 54 of his court of appeals nominees. In comparison, President Obama had two justices and 30 appellate judges confirmed at the end of his first term (and just 55 confirmed in all eight years).
- The Senate [confirmed](#) 174 of Trump's district court nominees. Obama had 143 confirmed at this point (and 268 total).

Circuit	End of Obama Administration 2017 Circuit Makeup		Through the First session the 116th Congress 2019 Circuit Makeup		Percentage of Trump Appointees on the Court of Appeals
	Democratic-President Appointed Judges	Republican-President Appointed Judges	Democratic-President Appointed Judges	Republican-President Appointed Judges	
D.C. Circuit	7	4	7	4	27% (three of 11)
First Circuit	4	2	4	1	0
Second Circuit	9	4	6	7	38% (five of 13)
Third Circuit	8	5	6	8	28% (five of 17)
Fourth Circuit	9	6	8	7	20% (three of 15)
Fifth Circuit	8	9	5	12	35% (six of 17)
Sixth Circuit	6	10	5	11	27% (six of 16)
Seventh Circuit	5	6	2	7	33% (three of 11)
Eight Circuit	3	8	1	10	37% (four of 11)
Ninth Circuit	22	7	16	13	34% (ten of 29)
Tenth Circuit	7	5	7	5	17% (two of 12)
Eleventh Circuit	9	3	5	7	50% (six of 12)
Federal Circuit	8	4	8	4	0

Race and Gender Diversity

Seventy-six percent of Trump's confirmed nominees are male and nearly 85% are white. In contrast, only about 58% of [Obama's nominees](#) were male, while 64% were white.

The Supreme Court

Of course, Trump's most notable legacy with respect to the courts will be his appointments of Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett. Even before their confirmations to the Court, each had demonstrated records of undermining rights and protections for everyday American. Now on the Supreme Court, they have [already](#) eroded critical rights.

First, Donald Trump nominated Neil Gorsuch to fill a seat that had been left open for over a year after Senate Republicans refused to even grant a hearing to Merrick Garland. As AFJ highlighted in our comprehensive [report](#) on Gorsuch's record, he had, among other things, a long record of ruling against workers, consumers, and persons with disabilities, including a [dissent](#) arguing that a company did not violate a federal law designed to protect the health and safety of workers when it fired Alfonse Maddin, a truck driver who, after his truck broke down, left his cargo so that he could seek shelter from deadly freezing cold temperatures. When Gorsuch's nomination could not get enough votes to invoke cloture in the Senate, Republicans changed the rules to lower the vote threshold and ensure his confirmation.

On the bench, as AFJ predicted, Gorsuch has continued to be a consistent voice against workers and consumers. One of his first [opinions](#), for example, made it harder for victims of wage theft to hold their employers accountable (Epic Sys. Corp. v. Lewis). And, despite pledges to respect precedent, he [joined](#) a majority of the Court, including Kavanaugh, to overturn a 40-year-old precedent to undermine the rights of workers to fight for better wages and working conditions (Janus v. AFSCME). He was also consistent in supporting efforts to undermine our democracy.

AFJ also vigorously fought [Brett Kavanaugh](#). Before his nomination to the Supreme Court, Kavanaugh had a long record as a partisan operative, including working for Republicans in Bush v. Gore, assisting in Ken Starr's investigation of President Bill Clinton, and serving for five years in the George W. Bush White House. As a lower court judge, he wrote a "roadmap" for the courts to overturn the Affordable Care Act and he consistently ruled against workers, consumers and the environment. In fact, a Trump White House [memorandum](#) touted Kavanaugh's nomination by noting that he had overruled federal regulators 75 times on cases involving clean air, consumer protections, and other issues. Kavanaugh [called](#) Occupational Safety and Health Administration (OSHA) protections "paternalistic[]." He also regularly ruled to undermine environmental protections. In one [case](#), he rejected an EPA rule requiring that states bear

responsibility for their fair share of toxic pollution that reaches states downwind of the source. The EPA [estimated](#) that the rule could prevent between 13,000 and 34,000 premature deaths, 19,000 hospital visits and 1.8 million days of missed work or school per year. The Supreme Court overturned Kavanaugh in a 6-2 decision.

During Kavanaugh's confirmation hearings he was highly misleading and unforthcoming. He misled the Senate about his work on highly controversial Bush nominees, his knowledge of stolen Democratic files, and his involvement in some of our nation's most controversial national security policies. Dr. Christine Blasey Ford came forward with credible allegations that she had been sexually assaulted by Kavanaugh. After a rushed hearing during which Dr. Ford demonstrated grace and integrity while Kavanaugh was contemptuous — demonstrating unfit temperament for a Supreme Court seat — Republicans nevertheless pressed on and confirmed him to the Court without a full investigation or release of his records.

Since his confirmation, Kavanaugh has continued to erode rights. Along with Gorsuch, he [would have](#) allowed Trump to deport 700,000 Dreamers (Department of Homeland Security v. Regents of Univ. of Cal.). He [would have](#) allowed businesses to fire, not hire, or otherwise discriminate against LGBTQ Americans (Bostock v. Clayton County). Along with Gorsuch, he would have [allowed](#) the Trump Administration to include a citizenship question on the Census, resulting in a severe undercount of minorities and depriving their communities of resources and accurate political representation. He also joined the 5-4 decision [holding](#) that political gerrymandering cases can never be challenged in federal court. This decision was a major political victory for Republicans, who have manipulated electoral maps to dilute the vote to entrench their own power.

Finally, as demonstrated in our report on [Amy Coney Barrett](#), because of her clear opposition to the ACA and Roe v. Wade, Donald Trump nominated her to the Supreme Court after the death of Justice Ruth Bader Ginsburg. In moving forward with Barrett's nomination, Senate Republicans broke their own rule against confirming Supreme Court justices in election years — a rule invented to block Merrick Garland's confirmation to the Supreme Court for nearly a year. Ultimately, Republicans confirmed Barrett, after a hearing in which she was evasive, misleading, and even contemptuous, just eight days before the 2020 presidential election.

Almost immediately after being confirmed, Barrett heard oral arguments on the Republican lawsuit seeking to overturn the entirety of the Affordable Care Act and strip health insurance from tens of millions of Americans. In her short time on the bench, Barrett has also already [ruled against](#) public health measures to slow the spread of COVID-19 and [voted](#) to lift a stay of execution for Orlando Hall, making him the first federal prisoner put to death during a lame duck presidency in over a century.

Trump's Lower Court Judges

The story of Trump's impact on the courts, however, goes well beyond the Supreme Court, which decides fewer than 100 cases each year. In contrast, nearly 50,000 [cases](#) are filed in federal courts of appeals and over 390,000 are filed in district courts every year. For most Americans, the lower courts have the final say on their rights under the Constitution and whether critical legal protections will be properly enforced. As AFJ has catalogued, Trump's judges exemplify radically partisan agendas across a host of issues important to people across the country:

[Health Care:](#) President Trump explicitly said he would nominate judges who will erode access to quality health care for millions, including people with preexisting conditions, [tweeting](#), "My judicial appointments will do the right thing unlike Bush's appointee John Roberts on ObamaCare." Since taking office, the Senate has [confirmed](#) many judges who were previously on the front lines trying to gut the Affordable Care Act (ACA). And, Trump's judges have [already eroded health](#). In [Texas v. United States](#), Kurt Engelhardt was the deciding vote to keep alive a lawsuit challenging the entire ACA. During the COVID-19 pandemic, Trump judges have consistently voted to hamstring efforts to stop the spread of the deadly disease.

[Reproductive Rights:](#) Trump made clear that his judges would limit reproductive freedom, boasting that Roe v. Wade would be overturned ["automatically"](#) because of his judges. Many of his judges vehemently fought reproductive rights and access to contraception. Some have likened abortion to slavery and compared Roe to the infamous Dred Scott decision. One of his nominees, [Sarah Pitlyk](#), even opposed in vitro fertilization and surrogacy, suggesting that disposing of unused embryos was the equivalent of murdering children. [Wendy Vitter](#) spread junk science to restrict the rights of women, including urging supporters to distribute materials that claimed the birth control pill "kills" and somehow makes women more likely to be victim of violent assault and murder. Unsurprisingly, Trump's judges have followed through on limiting reproductive rights on the bench.

[Worker Protections:](#) Trump's lower court nominees previously advocated for allowing corporate interests to evade accountability when they mistreat their workers. [Andrew Oldham](#) even argued the entire Department of Labor is unconstitutional. Many fought health and safety protections, efforts to provide overtime pay to workers, and to expand the minimum wage. From the bench, Trump judges have continued to make clear their support for employers over

the rights of workers. They have protected employers who fired or retaliated employees who reported being called [racial slurs](#) or being [sexually harassed](#). His judges have repeatedly denied disability benefits even when their decisions “wholly ignore” medical evidence, including, for example, after a coal miner developed [black lung](#).

[Consumer Protections:](#) Trump has nominated judges who have dedicated their entire legal careers to siding with wealthy and powerful corporate interests over consumers. On the bench, Trump’s judges have lived up to their pro-corporate records. Trump’s judges on the Seventh Circuit [reversed](#) a three-decade precedent and ignored every other circuit’s precedent to constrain the ability of the Federal Trade Commission to protect consumers. Trump judges prevented the ability of the Food and Drug Administration from targeting tobacco companies. They repeatedly forced consumers into business-biased arbitration. On the Seventh Circuit, Amy Coney Barrett [ruled](#) against a woman forced to have a hysterectomy to remove a faulty IUD, and in favor of the group of corporations responsible for the device’s manufacture. District Court Judge Maryellen Noreika [refused](#) to accept a settlement agreement between a coalition of student-debt collectors and the Consumer Financial Protection Bureau, which would have penalized the debt collectors for violating federal consumer protection laws and brought debt relief to hundreds of thousands of student-borrowers.

[Gun Safety:](#) Like the President himself, Trump’s nominees have demonstrated that allegiance to donors at the National Rifle Association (NRA) takes priority over American lives and safety. [Howard Nielson](#) repeatedly represented the NRA in attempts to overturn firearm regulations. In an NRA questionnaire, [Lawrence VanDyke](#) called gun safety measures “misdirected” and said he discontinued his membership with the NRA only so he would not have to recuse himself in cases the NRA was involved in. Trump’s judges have continued to echo the President’s shameful stance on gun safety on the bench. Ninth Circuit judge Kenneth Lee [held](#) unconstitutional a ban on possession of magazines that hold more than ten rounds of ammunition, like those used in the San Bernardino and Thousand Oaks mass shootings. On the Fifth Circuit, Trump’s nominees [voted](#) to reconsider a decision that upheld a federal gun safety law allowing states to establish and enforce their own gun laws. Third Circuit Judge Stephanos Bibas [dissented](#) in a case upholding a ban on large capacity magazines. Then-Seventh Circuit judge Amy Coney Barrett [would have](#) overturned a law banning people convicted of felonies from possessing firearms.

[Access to Education:](#) Trump’s judicial nominees have records of hostility towards public education and the protection of vulnerable students. [Steve Menashi](#) supported Education Secretary Betsy DeVos efforts to erode protections for students of color, transgender students, sexual assault survivors, and victims of fraudulent for-profit colleges. He opposed need-based financial aid because it purportedly hurt the wealthy, and he compared universities’

collection of race data in college admissions to Germany under Adolf Hitler. [Chad Readler](#) pushed to eliminate the right to a public education from Ohio's state constitution and fought oversight of Ohio's charter schools (including audits and ethics obligations). On the bench, Trump's judges have lived up to their anti-education records. Numerous judges narrowed IDEA protections, such as Amy Coney Barrett, who as a Seventh Circuit judge [joined](#) a decision that a school district may deny education access on the basis of a student's disability. Sixth Circuit judge Amul Thapar repeatedly ruled to narrow Title IX protections. Trump's judges on the Sixth Circuit [disagreed](#) with a panel decision that found that the Constitution protects a "basic minimum education" that is potentially violated when the state fails to provide adequate schools and foundational literacy.

[Clean Air and Water:](#) Donald Trump denies the reality of climate change and has been committed to undoing clean air and water protections. As lawyers, his judges were on the [front lines](#) in fighting environmental protections; one judge — [Andrew Oldham](#) — has even argued the entire EPA is illegal. Republicans confirmed [Patrick Wyrick](#), a protégé of disgraced EPA Administrator Scott Pruitt, who cozied up to oil and gas lobbyists and acted as their conduit when he worked for the Oklahoma Attorney General's Office. [Joshua Kindred](#) fought regulations aimed at protecting Alaska's air, water, and wildlife as counsel to the Alaska Oil and Gas Association. After their confirmation, Trump's judges continued [to stand in opposition to environmental protections](#). Trump judges have gone out of their way to block challenges to [oil](#) and [natural gas](#) pipelines. They also [argued](#) that Flint, Michigan residents should not be allowed to sue the government officials who for years exposed them to lead-contaminated drinking water.

[Voting Rights:](#) Republicans have a long history of supporting efforts to suppress voters, and many Trump judges spent years in the trenches fighting to make it harder for people of color to vote. As lawyers, many worked to defend North Carolina's restrictive voting law that the Fourth Circuit found "targeted African Americans with almost surgical precision." Trump's judges supported Shelby County and its gutting of the Voting Rights Act (VRA), defended racial gerrymandering, and fought for the ability of states to purge minorities from voting rolls. And, Trump's lower court judges have continued to degrade our democracy from the bench. Five Trump-appointed judges on the Eleventh Circuit [reversed](#) a lower court decision and upheld an effective "poll tax" in Florida, even when the state could not tell someone the amount they had to pay in order to vote. Elizabeth Branch [argued](#) that people and organizations could not even sue for violations of the VRA. During the COVID-19 pandemic, Trump's judges consistently ruled against measures designed to protect the health of voters.

Trump judges especially capitalized on the life-threatening Covid-19 pandemic to limit voting access during the 2020 elections. Georgia district court judge Michael L. Brown [ruled](#) against a measure to shorten voting wait times in the

state after a June 2020 primary in which some voters waited for hours to cast their ballots. As a result, voters in Georgia were forced to wait up to **eleven hours** in some places to cast their vote in the 2020 presidential election. And Eighth Circuit judge Steven Grasz **ruled** against relaxing in-person signature requirements in Arkansas in a case brought by two registered voters, one who was undergoing chemotherapy for stage IV cancer, and another who lives in a retirement community with 400 other high-risk residents.

Racial Justice: Donald Trump has endorsed and enabled racism during his presidency and before he was in office, from promoting “birther” conspiracy theories about President Obama to describing white supremacists in Charlottesville as “very fine people.” His judicial nominees have engaged in similar behavior. Many nominees would not say if *Brown v. Board of Education* was rightly decided. His nominees spread “birther” conspiracies about Barack Obama, had inflammatory writings that disparaged racial justice, defended the Confederacy and “the first KKK”, and had homes containing racial covenants. After confirmation, Trump judges have consistently stood in opposition to racial equality. Amy Coney Barrett, on the Seventh Circuit **sided** with a business who had established a “separate-but-equal arrangement” in assigning employees to certain stores based on their race. Barrett also **held** that being called racial slurs (including the N word) did not create a hostile work environment. Other judges have dismissed **workplace** and **housing** discrimination claims by creating narrow legal tests that will make it nearly impossible to successfully raise such claims going forward.

Police Misconduct: Trump has nominated judges who spent their careers defending or even endorsing extreme punishments for the incarcerated and misconduct by police officers. Trump’s judges have likewise continued to turn a blind eye toward police abuses on the bench. For example, after federal officers used tear gas and rubber bullets to violently disperse peaceful Black Lives Matters protesters in front of the White House so that Trump could cross the street for a photo-op, Judge Dabney Friedrich **blocked** Black Lives Matter from even learning the identities of the officers involved. Trump’s judges have also supported qualified immunity for police in a wide range of cases, including a **case** where a police officer shot a Black man in the back as he ran away, even though the officers had conducted a pat-down and found no weapons on him, and a case involving officers who **followed** and subsequently interrogated a man at a Walmart simply for “shopping while Black.”

LGBTQ Rights: The Senate has confirmed scores of Trump judges who were previously lawyers on the front lines of fighting LGBTQ rights. Many worked directly with the Alliance Defending Freedom, which the Southern Poverty Law Center has identified as an anti-LGBTQ hate group. His judges opposed the Court’s decision in *Lawrence v. Texas*, the Supreme Court case which invalidated state laws prohibiting intimate relationships between homosexual couples in the privacy of their own homes. His judges led the fight against same-sex marriage and repeatedly defended the ability of employers and businesses to discriminate against LGBTQ Americans. The American Bar Association even

found Lawrence VanDyke “unqualified” because of his repeated hostility to LGBTQ rights. Not surprisingly, Trump’s confirmed judges have demonstrated callous disregard for the rights and lives of LGBTQ Americans from the bench. They have eroded anti-discrimination laws and allowed businesses and government officials to discriminate. Eleventh Circuit judges Barbara Lagoa and Britt Grant **held** that a city ordinance prohibiting therapists from performing conversion therapy on minors is a violation of the First Amendment. Fifth Circuit Judge Kyle Duncan **refused** to accord even basic respect to a litigant before him, insisting on using improper gender pronouns for her in court.

Women’s Equality: Trump’s nominees have argued that Title IX is unconstitutional, dismissed the existence of a “glass ceiling,” criticized sexual prevention advocates, and even belittled “Take Back the Night” marches. Many fought to weaken protections against sexual harassment and sexual assault. Not surprisingly, as judges they have made it more difficult to enforce Title IX in schools and made it tougher to bring Title VII gender discrimination cases. In one case, for example, Sixth Circuit Judge Amul Thapar **ruled** against a teenage girl who was sexually assaulted by an older classmate and whose school allowed her assailant to subsequently transfer back to the school. Thapar minimized the trauma she endured, claiming, “While we wish we lived in a world where schools could prevent the kind of discomfort [she] suffered, we do not.”

Immigrant Rights: The individuals Trump has nominated to the federal bench supported some of the President’s most xenophobic attacks on vulnerable immigrants and asylum seekers. Steven Menashi worked with Stephen Miller to advance President Trump’s draconian immigration policy. His nominees have fought protections for Dreamers. On the bench, Trump’s judges have used their new powers to further push anti-immigrant agendas. His judges have upheld Muslim bans and made it difficult for asylum seekers to exercise their rights.

Persons with Disabilities: President Trump has nominated individuals who have shown hostility toward laws that protect the rights people with disabilities. **Neomi Rao** even wrote numerous articles criticizing bans on “dwarf-tossing,” a degrading practice in which individuals throw little people for sport or entertainment. And, once on the bench, Trump’s judges have issued rulings that demonstrate their hostility towards protecting the rights of people with disabilities, including decisions making it harder for persons with a disability to vote during the pandemic. John Bush, for example, **reversed** a \$775,000 jury award for a deaf supermarket employee after Costco failed to accommodate her disability as required under the law. Trump Eighth Circuit judge Steven Grasz would have **ruled** that, under the ADA, it was permissible for a theater to only provide captioning for deaf individuals on one Saturday matinee per show. Trump Eleventh Circuit judge Elizabeth Branch dissented in a **case** arguing that the Justice Department could not even go to court to enforce Title II of the Americans with Disabilities Act, which prohibits discrimination in public services by cities and states. The case involved care for children with severe health conditions; a Justice Department investigation found that Florida was

unnecessarily institutionalizing children with disabilities.

Tribal Rights: Trump's judicial nominees also reveal his attitude against fairness, equality, and opportunity for Native Americans. As the most illustrative example, **Eric Miller** has a lengthy and disturbing record on Native issues, leading to opposition to his nomination from the National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF). This is one of only a small handful of times in NCAI's history that they have formally opposed a judicial nomination. On the bench, President Trump's judges continue to fight against rights for Native American and Native Alaskan communities. For example, in a **decision** that severely undermines tribal sovereignty, Eighth Circuit judge L. Steven Grasz wrote an opinion that eroded the authority of tribal courts to hear cases involving issues impacting tribal members. And Ninth Circuit judge Ryan D. Nelson **ruled** against the Yakama Nation, holding that the state of Washington can exercise criminal jurisdiction over members of the Confederated Tribes and Bands of the Yakama Nation who commit crimes on reservation land.

Undermining Civil Liberties and the Rule of Law: Trump's judicial nominees have also expressed expansive views of unchecked executive power and fought against protections for civil liberties. Many of his nominees, for example, were on the front lines during the Bush Administration in condoning torture. **Justin Walker** rushed to Trump's defense after he fired James Comey because of the Russia investigation; he criticized the Mueller investigation and argued that the FBI should not be independent of the president. **Neomi Rao**, before becoming a judge, had stunning views on executive power, and since joining the D.C. Circuit has repeatedly sided with Trump, including to try to shield him from investigations. Other Trump judges condoned his misappropriation of Congressional funding to build his border wall.

Republicans Degraded Our Democracy's Institutions and Norms

One of the most striking developments in the judicial nomination process was the wide-ranging abandonment of norms, rules, and traditions in order to accelerate confirmation of the maximum number of judges. This was done without regard for the questionable credentials and caliber of many nominees, or for the constitutional duties of the Senate in the judicial confirmation process.

- Senate Republicans broke with precedent and Judiciary Committee rules when they rushed to confirm Amy Coney Barrett to the Supreme Court mere days before national elections, despite their own purported principle in 2016 (when Republicans did not even give Merrick Garland a hearing) that Supreme Court vacancies in election years should be filled by the president elected in November.
- Rather than nominating individuals who would enjoy broad bipartisan support, Republicans changed Senate rules to lower the threshold for ending debate on a Supreme Court nomination from 60 to 51 votes. This allowed for the confirmation of Neil Gorsuch by a vote of 54–45, Brett Kavanaugh by a vote of 50–48, and Amy Coney Barrett by a vote of 52–48.
- Republican did everything in their power to obstruct a fair confirmation process for Brett Kavanaugh. First, Chairman Grassley made a partisan, unilateral decision to formally request only a small portion of the documents pertaining to Kavanaugh's record in the Bush White House. Most disconcerting about the Kavanaugh nomination process was the manner in which Senate Republicans handled credible allegations of sexual assault against Kavanaugh made by Dr. Christine Blasey Ford. Chairman Grassley held a rushed hearing where Dr. Blasey Ford was the only witness, other than Kavanaugh, called to testify. After the Senate Judiciary Committee reported Kavanaugh's nomination to the full Senate, the FBI then conducted a cursory investigation into the sexual misconduct allegations. The White House and Senate Republicans severely constrained the FBI from fully investigating the allegations.
- In over 120 years, the Senate has only confirmed one judge (forty years ago) of an outgoing president of the defeated party during a lame duck session. Since Trump's defeat, a total of [14](#) Trump nominees have been confirmed to the federal courts.
- Under President Obama, Republicans vigorously fought for the rights of home-state senators and extensively used the blue slip to block

nominees. During the Obama years, there were zero exceptions to the blue slip rule, which required that both home-state senators approve a judicial nominee before the nominee is confirmed. Under President Trump, Republicans quickly discarded the 100-year-old tradition, confirming appellate court judges over the objection of a home state senator. In 2019, for the first time in history, they went further, confirming judges over the objection of **both** home-state senators.

- In early 2019, Republicans cut the amount of debate time for district court nominations by over ninety percent, from thirty hours of debate to only two.
- Republicans in the Senate confirmed **eight** of President Trump's nominees who were rated "Not Qualified" by the American Bar Association (ABA). Judicial nominees rated "Not Qualified" are found lacking in either their character, professional competence, or judicial temperament. By contrast, none of Obama's nominees were deemed not qualified.
- During the Trump Administration, nominees repeatedly failed to disclose material, repeatedly misled the Senate about their records, and refused to answer questions from the Committee. Senate Republicans condoned the lack of full disclosure.
- Chairmen Grassley and Graham also arranged hearings in order to reduce vetting and scrutiny of Trump nominees. Over a two-year period during the Obama Administration, Chairman Grassley held hearings on a total of only five circuit court nominees. Under President Trump, Chairman Graham held hearings on six circuit court nominees in one five-week period alone. Republicans repeatedly held hearings with multiple appellate nominees on the same panel, and even held two hearings while the Senate was in recess, without Democrats' consent and at times when no Democratic senator was able to attend the hearings and question the nominees.

Conclusion

The Trump Administration's devastating legacy in the federal judiciary is the culmination of decades of far-right efforts to shape the courts. There is no sugar-coating to be done; the American people are, and will be, harmed for decades to come because of his judges. Everyday Americans will be hurt by the decisions of the people he has put on the bench.

While confirmations of far-right jurists are disheartening, however, the last four years have also provided hope. Not only were nominees defeated, but a broad movement grew throughout the country and progressives are ready to take back our courts to truly ensure equal justice under the law, a fulsome democracy, access to justice, reproductive freedoms, healthcare, LGBTQ rights, worker, consumer, and environmental protections.