



THE BENCHLINE

Judicial Nominees

Earlier this month, President Trump announced two new Circuit Court nominees on Truth Social: Benjamin Flowers (Court of Appeals for the Sixth Circuit) and Matthew Schwartz (Court of Appeals for the Second Circuit). Both nominees are white men. Schwartz, a former Alito law clerk and current Sullivan & Cromwell partner, served as Trump's **personal lawyer** in several New York criminal and civil cases. Like Justin Smith (Eighth Circuit), Emil Bove (First Circuit), Todd Blanche (acting U.S. Attorney General), and D. John Sauer (Solicitor General) before him, Schwartz is the latest of Trump's former personal lawyers nominated to the federal bench or appointed to a significant role within his administration.

Flowers, a former Scalia law clerk, has served as solicitor general of Ohio since 2019. In this role, he was the lead **attorney** for a coalition of Republican-led states in ***National Federation of Independent Business v. Department of Labor*** (2022), in which the Supreme Court struck down the Biden administration's COVID-related vaccine mandate. In his Truth Social posts announcing these nominations, Trump highlighted Flowers's repeated **challenges** to Biden administration policies and Schwartz's **fight** against "Lawfare and Government Overreach." AFJ will continue to scrutinize and share pertinent background from these nominees' records.

JUDICIAL FITNESS TEST

☐ ACKNOWLEDGE **CERTIFIED** 2020 ELECTION RESULTS

☐ ACKNOWLEDGE **JANUARY 6 INSURRECTION**



JUSTIN SMITH REFUSED TO ACKNOWLEDGE BOTH.

GRADE:



Last Wednesday, the Senate Judiciary Committee held a hearing for federal judicial nominees Justin Smith (Court of Appeals for the Eighth Circuit), Tony Mattivi (District Court for the District of Kansas), Tony Powell (District Court for the District of Kansas), and Jeffrey Kuhlman (District Court for the District of Kansas). During his Senate hearing, Smith consistently refused to state that Joe Biden won the 2020 presidential election or that the Capitol was attacked on January 6. Several senators questioned Smith's ability to stay impartial as a federal judge given his personal connection to Trump, long career in Republican politics, and deep ties to extremist, right-wing organizations.

Additionally, Mattivi butchered a basic question from Senator Kennedy on religious discrimination. In his answer, Mattivi suggested that only the government was prevented from discriminating against people based on their religion, and therefore that private employers could refuse to hire a prospective employee for wearing a religious head covering. One would hope that a nominee for a lifetime seat on the federal bench would be capable of answering such a basic legal question, but Mattivi's ignorance is just the latest example of the inadequacy of Trump's judicial nominees.

HOLDING

THE BENCHLINE

Trump has continued weaponizing the courts to punish those who try to hold him accountable for misconduct. Thankfully, lower court judges are continuing to refuse to allow him to get away with it. Last week, a federal judge dismissed Trump's defamation lawsuit against The Wall Street Journal, noting that Trump had not "plausibly alleged" that the WSJ had published an article it knew was false. Trump sued the WSJ for an article that discussed a letter from Trump to known sexual predator Jeffrey Epstein. The article described how Trump's letter to Epstein contained a drawing of a naked woman on it with Trump's signature below the woman's waist, and a message that said "Happy Birthday- and may every day be another wonderful secret." Trump alleged that the letter was fake, that he "never wrote a picture" in his life, and that "no authentic letter or drawing exists." Trump's defamation lawsuit sought 10 billion in damages, but Judge Darrin Gayles dismissed the lawsuit.

THE FIGHT OVER YOUR VOTER DATA

THE TRUMP DOJ IS SUING STATES TO FORCE ACCESS TO VOTER REGISTRATION LISTS.

30+

STATES HAVE ALREADY BEEN
TARGETED AND PRESSURED
WITH LAWSUITS.

12

STATES HAVE ALREADY
COMPLIED OR PROMISED TO
HAND OVER VOTER DATA.

5

STATES — CALIFORNIA, MASSACHUSETTS,
MICHIGAN, OREGON, AND RHODE ISLAND
— HAVE REJECTED THOSE ATTEMPTS.

**OUR COURTS ARE ONE OF
THE LAST LINES OF DEFENSE
AGAINST GOVERNMENT
OVERREACH.**

Meanwhile, lower court judges continue to intervene in other areas to protect civil rights. U.S. District Court Judge Mary McElroy dismissed a lawsuit led by Trump's Department of Justice that sought to gain detailed voter data from Rhode Island officials. In her dismissal, McElroy emphasized that the law does not allow the DOJ to engage in the kind of "fishing expedition" it tried to conduct in the case. While DOJ attorneys claimed they needed the voter data for security purposes, their motives were called into question when these attorneys also acknowledged they were seeking unredacted voter information to share with the Department of Homeland Security to check citizenship status. At least 12 states have provided or promised to provide their detailed voter registration lists to the DOJ. The Trump DOJ has also filed suits in at least 30 states, trying to force these states to release the data. Judges have rejected those attempts in California, Massachusetts, Michigan, Oregon, and now Rhode Island. The lower courts must continue to protect our civil rights and zealously guard against Trump's overreach, before irreversible damage takes place.

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Alliance for Justice
11 Dupont Circle NW
Suite 500
Washington, DC 20036
United States