



Policy Pack II.X

THE COURTS

November 2019



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THE COURTS

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Note from Platform

A little over a year ago, we joined youth organizers and advocates to demand the United States Senate REJECT Brett Kavanaugh. A little over a year ago, Brett Kavanaugh was confirmed to the United State Supreme Court and it felt like the floor was pulled out from under us.

For us, the fight to stop this confirmation was not about the tallying of “wins” and “losses.” For too many lawmakers, though, it was entirely about delivering a victory for their party — human rights be damned. For us, this fight was born from an urgent need to stop the silencing of survivors; a statement that predators will be held accountable rather than ascend to power; and a preemptive move to block decades of rollbacks of our civil liberties.

While we lost that battle for a Supreme Court seat, we collectively mobilized one of the broadest, biggest groundswells of opposition against a Supreme Court nominee — and we are not done fighting to return the courts to the people. In a government for and by the people, we have a voice in every branch of government. Judicial nominees may not be on the ballot, but the president who nominates and the senators who confirm then are. Yet right now, Donald Trump and his allies in the Senate have failed to consider our futures as they rush through the confirmation process so fast that we’re left with whiplash. In their haste to confirm judges, they’re denying all senators and the public the opportunity to fully vet those that they’re putting into power and determine how we should respond.

For young people, this is particularly concerning as judges receive lifetime appointments. This means that they are mapping out our futures with every decision they write. This means that our futures are being written by Donald Trump, Mitch McConnell, and the wealthy donors who put them in office. We refuse to cede this branch of our democracy to these corrupt politicians. Fortunately, with leaders like Alliance For Justice Action Campaign, our fight will stay strong. They’re guiding the national conversation about the importance of the courts with a goal of advancing core constitutional values, preserving human rights, securing unfettered access to the judicial system, and guaranteeing the even-handed administration of justice for all.

We are grateful to partner with and learn from their leadership throughout this Policy Pack to ensure you have the tools to help take back our courts.

In community,
Platform

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Note from AFJAC

Last year, progressives organized and made their voices heard over the confirmation of Brett Kavanaugh to the Supreme Court. The Alliance for Justice Action Campaign is proud to partner with Platform to build on that energy for years to come. In developing and distributing this Policy Pack, we hope to arm young women, non-conforming, non-binary, and femme folks with the information and tools they need to continue centering the federal courts in popular political discourse.

During the Kavanaugh fight, our generation showed up in mass numbers. We will not forget the bravery of Dr. Christine Blasey Ford. We will not forget the shameless way Kavanaugh was forced through the Senate without a proper investigation or a full disclosure of his record. And we will certainly not forget the betrayal of senators like Susan Collins and Cory Gardner. To demand that our voices be heard, we need to hold these lawmakers accountable when they seek reelection in 2020. No one who voted to give Kavanaugh a lifetime appointment under such a sham process should be rewarded with another term. Next year, we will show up to the polls and be courts voters.

For forty years, Alliance for Justice/ AFJ Action Campaign has been fighting to protect the integrity of our courts at all levels. While the national spotlight shines brightest on the Supreme Court, we must fight to safeguard federal Circuit and District courts as well. The Supreme Court receives thousands of petitions every year, and only hears a tiny percentage of these cases. This means that most final decisions are issued by the lower courts. So, it is imperative that we deploy the same levels of outrage and enthusiasm when the district courts and courts of appeals are stacked with unfit nominees like Steven Menashi and Sarah Pitlyk (both of whom you can read more about in this policy pack).

We're facing a decades-long strategy by conservatives to entrench their interests and stack out federal courts with judges who favor the wealthy and powerful over the rights of all of us. Senator McConnell in particular has been ruthless in his quest to build the judiciary in his image. After years of obstructing President Obama's nominees to leave hundreds of vacancies open — even leaving a Supreme Court seat vacant for almost a full year — he and Republican leadership changed long-respected rules to jam Trump's nominees through a breakneck speed.

It is long-past time for progressives to fight back, and at AFJ Action Campaign, we believe young people must be leaders in this fight. It is young people, after all, who will be subject to the effects of this skewed judiciary for decades to come.

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Lingo

Nuclear Option: With the filibuster remaining as a tool of the Senate, a 60-person majority is typically required in order to proceed to a vote on legislation. Senators used what is referred to as “the nuclear option” because it enabled a majority of the Senate to change Senate rules. As a result, it now only requires a simple majority of the Senate to confirm a judge, including justices to the Supreme Court. In 2019, Majority Leader McConnell used the nuclear option to change Senate rules to enable confirmation of a lower court judge after just two hours of debate (instead of 30 hours under the previous rule), limiting transparency and public scrutiny.² With debate time reduced to two hours, Senate Republicans can confirm nominees fifteen times faster than before.

Judicial Review: The Court has the power to determine whether a law violated the Constitution and to enjoin enforcement of the law. This was a power affirmed by *Marbury v. Madison* in 1803. The case determined, “It is emphatically the duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret the rule. If two laws conflict with each other, the Court must decide on the operation of each.”³

District/Trial Court: This is the lowest federal court. There are 94 across the country, with at least one in each state and Washington, DC. District judges preside over the court and the cases brought before it. Juries are often used to decide trials. These courts “resolve disputes by determining the facts and applying legal principles to decide who is right.”⁴

Appellate Court/ Circuit Court: This court sits between the district/trial court and the Supreme Court. There are 13 across the country. The 94 District Courts are organized into regions and each region corresponds to a particular appellate court. In this court, three judges and no jury determine whether or not the lower court applied the legal principles properly.⁵

Supreme Court: As the highest court, the nine Justices have the final say in the determination of the validity of a law and whether the law was properly applied to a case in the lower courts.⁶

Appeal: A challenge to a previous court ruling. If a decision is made in a lower court that a party wants to contest, they will attempt to take their case to a higher court for another decision. The higher court might affirm the lower court ruling, reverse it, or send it back (remand) for further action. The Court of Appeals must hear a case that is raised from the lower, District Court. However, in most cases, the Supreme Court can decide whether it wants to hear a case from the lower Court of Appeals.⁷

Injunction: A court may rule a body halt its action, for example in implementing a rule or law. Injunctions may be temporary or they can be permanent. The scope of the injunction can also differ: they may be nationwide or otherwise confined to a particular jurisdiction. For example, when Trump’s Muslim ban was challenged in court, it faced a nationwide injunction, meaning the ban was stopped in its tracks across the country for the time being, and not just the states in districts and circuits that issued the rulings.⁸ In contrast, 13 states filed a suit against Trump’s birth control exemption rule and in that case, the judge decided the injunction only applied to those 13 states.⁹

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Lingo (cont'd)

Writ of Certiorari: In most instances, the Supreme Court has the right to select which cases it will hear and subsequently rule on. In order to determine those cases, it may grant a writ of certiorari to parties who are dissatisfied with a lower court ruling and petition the high court to hear the case. The Supreme Court often only chooses to hear cases that offer “national significance, might harmonize conflicting decisions in the federal Circuit courts, and/or could have precedential value.” Four out of the nine justices must vote to accept a case in order for it to be added to the docket.¹⁰

Amicus Curiae: Meaning “Friend of the Court.” An individual or organization not directly involved in the case may write a legal brief to “‘help’ the Court reach its decision by offering offering facts, analysis, or perspective that the parties to the case have not.”¹¹

Judicial Activism: In 1947 Arthur Schlesinger, Jr. determined there were two categories of judges, one of which were those who practiced judicial activism. These judges might abandon precedent and recognize that laws can adapt. As Schlesinger stated, this type of judge is one who “knows that political choice is inevitable; he makes no false pretense of objectivity and consciously exercises the judicial power with an eye to social results.” An example of judicial activism is *Brown v. Board of Education*, which put an end to segregation and overturned *Plessy v. Ferguson* in the process.¹²

Judicial Restraint: On the other hand, Schlesinger recognized there were judges who instead exercise judicial restraint. These judges are more concerned with the “original intent” of the Constitution and will lean more heavily on precedent in making their own determination.¹³

Stare decisis: A concept that courts should follow the precedent set by rulings from previous cases in determining the ruling of the present case. The Supreme Court is not bound to this and may reverse precedent. Last term, the Court, in a case called *Janus*, overturned a 40 year old precedent in order to undermine public sector unions. This is why even the settled law of *Roe v. Wade* remains under threat, because the current Supreme Court may decide to overturn precedent and invalidate the rights preserved by the *Roe v. Wade* ruling.¹⁴

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Numbers to Know

The below numbers are accurate as of the dates indicated. Check out AFJ's Judicial Selection Snapshot for the full breakdown and up-to-date statistics.¹⁵

The Open Seats

- There are currently 92 district court and 5 appellate court vacancies, 34 and 4 of which have nominees, respectively.
- Of the 92 district court vacancies, 21 are pending in committee and have not had a hearing; 8 are pending in committee and had a hearing; and 5 are pending on the Senate floor.
- Of the 4 appellate court vacancies, 2 are pending in committee and have not had a hearing; 2 are pending in committee and had a hearing.

The Trump Nominees

- In the first two years of the Trump Administration, the Senate confirmed 37 appellate court nominees (as of April 2019) whereas the Senate confirmed just 16 appellate court nominees in the first two years of the Obama Administration.
- In the first two years of the Trump Administration, the Senate confirmed 53 district court nominees (as of April 2019) whereas the Senate confirmed 44 district court nominees in the first two years of the Obama Administration.
- By the end of 2018, 25 out of 30 of the Trump Administration's appellate court nominees were Federalist Society members.
- The Trump Administration is expected to fill 29% of all appellate court judgeships by the end of 2019. There's 179 total appellate court judgeships. Trump is expected to fill the remaining 9 seats and he has confirmed 43 judges to bring his predicted number of confirmed judges to 52.

The Judicial Demographics

- The majority of confirmed nominees under the last six presidents were male: 76.67 percent of Trump nominees, 57.7 percent of Obama nominees, 78.2 percent of W. Bush nominees, 70.60 percent of Clinton nominees, 81.3 percent of H.W. Bush nominees, and 91.6 percent of Reagan nominees.
- The majority of confirmed nominees under the last six presidents were white: 86 percent of Trump nominees, 64.05 percent of Obama nominees, 82.2 percent of W. Bush nominees, 75.3 percent of Clinton nominees, 89.1 percent of H.W. Bush nominees, and 93.9 percent of Reagan nominees.
- The percentages of Black confirmed nominees under the last six presidents are: 4 percent of Trump nominees, 18.73 percent of Obama nominees, 7.3 percent of W. Bush nominees, 16.4 percent of Clinton nominees, 6.7 percent of H.W. Bush nominees, and 1.8 percent of Reagan nominees.
- The percentages of Hispanic confirmed nominees under the last six presidents are: 3.33 percent of Trump nominees, 10.88 percent of Obama nominees, 9.1 percent of W. Bush nominees, 6.6 percent of Clinton nominees, 4.1 percent of H.W. Bush nominees, and 3.6 percent of Reagan nominees.
- The percentages of Asian Pacific confirmed nominees under the last six presidents are: 6.67 percent of Trump nominees, 6.65 percent of Obama nominees, 1.2 percent of W. Bush nominees, 1.3 percent of Clinton nominees, 0 percent of H.W. Bush nominees, and 0.5 percent of Reagan nominees.

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Numbers to Know (cont'd)

The Judicial Demographics (cont'd)

- The percentages of Native confirmed nominees under the last six presidents are: 0 percent of Trump nominees, 0.3 percent of Obama nominees, 0 percent of W. Bush nominees, 0.2 percent of Clinton nominees, 0 percent of H.W. Bush nominees, and 0 percent of Reagan nominees.
- The percentages of Native Hawaiian or other Pacific Islander confirmed nominees under the last six presidents are: 0 percent of Trump nominees, 0.3 percent of Obama nominees, 0 percent of W. Bush nominees, 0 percent of Clinton nominees, 0 percent of H.W. Bush nominees, and 0 percent of Reagan nominees.
- The courts severely lack representation of gay, lesbian, bisexual, and transgender judges. The numbers of confirmed LGBTQ+ nominees under the last six presidents are: 0 Trump nominees, 11 Obama nominees, 0 W. Bush nominees, 1 Clinton nominee, 0 H.W. Bush nominees, and 0 Reagan nominees.
- People with disabilities are also extremely underrepresented on the courts. The number of confirmed nominees with disabilities under the last six presidents are: 0 Trump nominees, 0 Obama nominees, 2 W. Bush nominees, 3 Clinton nominees, 1 H.W. Bush nominee, and 1 Reagan nominee.

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The Nomination Process

The judicial nomination process was designed to be a pinnacle of checks and balances, allowing each branch a role in the proceedings.

Nomination

It begins with the White House. The President selects the nominees to fill vacancies on the district, appellate, and Supreme courts. Typically, the President seeks “home state” Senators’ approval, meaning if there was a vacancy on the Pennsylvania district court, the two Senators from Pennsylvania would be able to give input. The Senators signal their approval for the nomination moving forward (traditionally this procedural move did not always indicate approval of the nominee on the merits) by returning what is called a “blue slip” to the Chair of the Senate Judiciary Committee. If they do not support the nomination moving forward, they may withhold their blue slip without reason or return it with negative comments. Should the home state senators opt for the latter, historically the nomination does not proceed. Republicans blocked 18 of President Obama’s nominees by refusing to return blue slips. While Republicans have maintained the requirement that both home state senators must support a district court judge, Republicans have changed the rules for Court of Appeals judges and, for the first time in history, have confirmed nominees over the objections of both home state senators.¹⁶

Committee Proceedings

Once the nomination proceeds, the Judiciary Committee Chair will determine the timeline of proceedings, including receipt of the nominee’s records, hearings, and vote out of committee. The goal is to provide a comprehensive review of the nominee’s qualifications and fitness to serve. At their hearing, many Trump nominees have been scrutinized about their ability to respect case law precedent. Many nominees, for example, refused to say if they believed *Brown v. Board of Education* was correctly decided, meaning they can’t even confirm whether they think schools should be desegregated.¹⁷ In recent years, however, Republicans have tried to limit vetting. For Brett Kavanaugh’s confirmation, for example, Chairman Grassley did not ask for records of Kavanaugh’s service as Staff Secretary to President Bush, despite the fact that Kavanaugh credits his role as a judge to those years when he played a vital part in the advancement of controversial Bush Administration policies.¹⁸ Chairman Grassley then rushed through the investigation of credible accusations of sexual assault at the hands of Kavanaugh in order to get a positive vote out of committee.

For two years under the Obama Administration, Chairman Grassley held just five hearings on court of appeals nominees. However under Trump, Chairman Grassley held five hearings on court of appeals nominees in just one month. Not to mention that two of Chairman Grassley’s hearings were scheduled during Congressional recess and at times when no Democratic senator was able to attend and question the nominee.¹⁹

Once the hearing process is over, the Senate Judiciary Committee members will vote to determine whether or not the full Chamber should be able to vote on the nominee. If a nominee is voted out of committee, all Senators have the opportunity to present arguments on behalf of or against the nominee.

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The Nomination Process (cont'd)

The Senate Floor

Historically, a nominee needed 60 votes, a filibuster-proof majority, to end debate and earn confirmation. However, in 2013 when Democrats had control of the White House and Senate, Republicans were filibustering and preventing nominees from getting a vote. In turn, then-Senate Majority Leader Harry Reid decided to pursue the “nuclear option” on federal cabinet and judge positions. However, Supreme Court nominees still needed 60 votes.²⁰ Then-Senate Minority Leader Mitch McConnell responded at the time, “You’ll regret this, and you may regret this a lot sooner than you think.”²¹

When the Republicans took the majority in 2014, now-Senate Majority Leader Mitch McConnell kept the 60-vote requirement in place to prevent action on President Obama’s nominee to fill the vacancy left by the late Justice Antonin Scalia: DC Circuit Judge Merrick Garland. This seat was left vacant for 11 months as McConnell refused to even hold a single hearing for President Obama’s nominee and many Republican Senators refused to schedule even a courtesy meeting with him. Once Trump was elected in 2016, Majority Leader McConnell went full-revenge mode and employed the nuclear option for the Supreme Court, yielding Neil Gorsuch and Brett Kavanaugh.²²

Throughout this process, the role of money is never far from the center. In fact, Judicial Crisis Network (JCN), a conservative judicial advocacy group, spent millions to block Merrick Garland, spent \$1.5 million to defend Kavanaugh’s confirmation after Dr. Christine Blasey Ford came forward, spent \$1 million on ads attacking Democrats regarding their votes on lower court nominees, and intended to spend \$250,000 to pressure Mitch McConnell to return from recess and fill the vacancies.²³

While the judges confirmed to our nation’s courts will have a fundamental impact on the rights and lives of people across the country, the process of nominating a judge to the court has become little more than a transaction of party wins and losses and of dollars spent.

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Why Justices Matter

In the legislative branch, elected officials write laws that impact our daily lives. From laws that declare school recess must be allotted for an hour a day to passing Civil Rights legislation that promotes voting rights and bans discrimination to establishing protections limiting the amount of toxins and greenhouse gases corporations can emit, their actions play a profound role in how we navigate our lives, the opportunities afforded to us, and the obstacles that stand in our way. Every few years, these elected officials must answer for their actions at the ballot box, where every voter (and the corporations who pay to play) can determine whether their elected officials deserve to stay in office or should be replaced.

In analyzing the effectiveness of their lawmakers, one might consider the role they played in confirming judges to the district, appellate, or Supreme courts who are making decisions affecting nearly every aspect of our lives. Judges in the federal judiciary are nominated by the President of the United States and confirmed by the United States Senate. Once they are confirmed, Article III judges serve lifetime appointments, meaning they are left largely unchecked by the people and our lawmakers. The lifetime appointments are part of an effort to leave the courts objective and loyal to the duty of the office rather than subject to the mood and politics of the day. However, judges often fail to meet such objectivity and instead represent the politics of the offices who nominated and confirmed them. Then, as long as they choose to serve, these judges have the power to determine how the laws are applied to our lives, whether laws are valid and may continue to dictate how we live, or whether they need to be stricken or rendered unenforceable in practice. They are, in essence, “the final arbitrator interpreting the meaning of our rights across all issues.”²⁴ This is increasingly alarming due to Trump judges being younger and younger. For example, Allison Rushing on the Fourth Circuit Court of Appeals is only 37 years old, and Britt Grant to Eleventh Circuit Court of Appeals is 41 years old.

With the future at stake under Trump’s nominees, it is difficult to remember the Court as a place of progress. However, many of the greatest turning points in our country’s history were settled by the Court. In 1954, the Supreme Court decided that “separate but equal is inherently unequal” and ruled race-based segregation to be unconstitutional. In 1973, the Justices clarified that the constitutional right to privacy includes the right to be free from excessive government interference when seeking an abortion. In 2013, the Court struck down the Defense of Marriage Act and established marriage equality as the law of the land under the due process and equal protection clauses of the 14th Amendment. All of these cases were determined by the justices who were dedicated to preserving and protecting the rights of the people.

On the other hand, some of the country’s darkest moments happened in the courtroom when the majority of judges were determined to uphold their party’s backwards agenda above the needs of the people. In the 2013 *Shelby County v. Holder* case, the Supreme Court overturned provisions in Voting Rights Act that required jurisdictions with histories of racial discrimination to receive authorized approval before changing their election laws and procedures. As a result of the ruling, states heightened the effort to “clean” their voter rolls of voters under the guise of updating their systems. This led to at least 17 million people being purged from the voter rolls, especially people of color, students, and those living at the intersections of marginalized identities.²⁵

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Why Justices Matter (cont'd)

More recently, the Supreme Court voted to uphold the third version of the Muslim ban. This discriminatory ban has left families separated indefinitely, prevented people in danger from seeking safety in the U.S., and ended people's career opportunities.²⁶

Now, perhaps more than ever before, those dark times in the Court linger because of the Justices and judges who sit on the bench. The safeguards of democracy and human rights are weakened by the growing presence of Trump appointees and his loyalists on the Supreme Court as well as lower courts across the country. Take, for example, new Supreme Court Justice Brett Kavanaugh. As student activist Cassidy Pollard said at the Reclaim The Court rally in early October, "Brett Kavanaugh did not just end up on the Supreme Court. He was bought and manufactured by the Koch brothers and the Federalist Society."

The billionaire Koch brothers and the Federalist Society mapped out a strategic takeover of government agencies, regulations, and policies. In an effort to win over Republicans who were not loyal to Trump but invested in holding the federal courts, the Trump Administration decided to subject all nominees to a Federalist Society litmus test, pledging that all nominees would support overturning *Roe v. Wade* and undermine the Affordable Care Act.²⁷ As recent as twenty years ago, the policies of the Federalist Society remained at the margins of political discourse, believing "that most of the New Deal and administrative state are unconstitutional, that corporations have free speech and free religion rights, that women and LGBTQ+ people are not 'protected classes' under constitutional law, and that there is no right to privacy implied by the due process clause of the Constitution (i.e., banning abortion, contraception, and gay marriage are entirely constitutional)."²⁸ Today, these policies are the standard of doing business if one wishes to be nominated and confirmed to the bench.²⁹

Also included in their agenda are ending the federal minimum wage, rolling back environmental protections, and protecting the role of money in politics.³⁰ With Kavanaugh's confirmation as well as confirmations of their nominees up and down the court, the Koch brothers and Federalist Society drastically increased their power to better enact their agenda. Additionally, the confirmation of these judges unleashed the boldness of anti-abortion lawmakers. We see this litmus test reflected in the Trump Administration, where Trump has made it clear he will only nominate judges who will overturn *Roe v. Wade* and repeal the Affordable Care Act.

The impact has been immediate. In 2019 alone, seven states — Alabama, Georgia, Kentucky, Louisiana, Mississippi, Missouri, and Ohio — passed extreme abortion bans. The state lawmakers who voted for or signed these bans into law did so knowing they would prompt a judicial response. The intention behind these bans is not only to restrict abortion in their state, but to elevate it to the Supreme Court in hopes the new Court, particularly with Brett Kavanaugh replacing Anthony Kennedy, would overturn *Roe v. Wade*, which affirms the constitutional right to abortion. Fortunately, some judges at the district and appellate courts are presenting a line of defense to stop the enactment of Trump Administration policies.

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Why Justices Matter (cont'd)

After the Muslim ban was first introduced, it was a district court judge who issued a preliminary injunction to allow immigrants from the banned countries to travel across the border. After the Administration released a rule allowing more employers to deny birth control coverage for employees, it was a district judge who issued an injunction to prevent employers from securing baseless exemptions in the states that brought the case forward. After Georgia issued a six-week “fetal heartbeat” abortion ban, it was a district judge who issued an injunction, determining that the law “probably ran afoul of women’s right to an abortion.”³¹ After the Trump Administration issued the “Public Charge” rule which would essentially limit entrance to the United States to wealthy, white, currently able-bodied immigrants, it will likely be a district judge who determines whether to issue an injunction.

In these instances, these district courts played temporary but essential roles in preserving our basic rights. However, their role is often much more permanent as their ruling is more often than not, the final word on a case. District court judges and their juries hear nearly 450,000 cases every year; the three appellate court judges hear 50,000 of those cases (or 11 percent) every year; and the nine Supreme Court Justices hear less than 80 cases (or less than 1 percent of cases) every year. The power of the Supreme Court may be more often permanent and far-reaching, but the lower courts play a critical role in the cases that never make it to the high court.

Every day, the select powers-that-be on the Courts decide whether or not everyday people will have access to care, opportunity, protections, and the liberty to live full, safe, and healthy lives. Every day, they remind us exactly why it matters who sits in the seats of justice.

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In their Own Words

We could make a clear case for you on the dangers of the Trump Administration, their nominees and confirmed judges, as well as the threats they pose to LGBTQ+ individuals, survivors of sexual violence, communities of color, the health of our democracy, and the future of our climate and environment, common sense gun violence prevention, economic justice, and more. But we'll let them show you themselves:

Jeff Mateer, former nominee for a judgeship in Texas: **“Now I submit to you, a parent of three children who are now young adults: A first-grader really knows what their sexual identity [is]?’... ‘I mean, it just really shows you how Satan’s plan is working and the destruction that’s going on.”**

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Gordon Giampietro, former nominee for US District Court for the Eastern District of Wisconsin: **“calls for diversity — which is code for relaxed standards (moral and intellectual).”**

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The nominees posed such a threat that **Senator Tim Scott** broke from his party and reflected that Republicans need to **“stop bringing candidates with questionable track records on race before the full Senate for a vote.”**

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In an address to the NRA **Trump** said, **“You came through big for me, and I am going to come through for you... The eight-year assault on your Second Amendment freedoms has come to a crashing end.”** He then proceeded to talk about the virtues of Neil Gorsuch, his then Supreme Court nominee who was favored by the NRA and for whom the NRA spent over \$1 million to help confirm.

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In their Own Words (cont'd)

Amy Coney Barrett, confirmed judge to the Court of Appeals Seventh Circuit: Sided with an opinion that read, “**this separate-but equal arrangement is permissible under Title VII so long as the ‘separate’ facilities really are ‘equal.’**” This case allowed an employer to continue engaging in racial segregation.

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Ryan Bounds, nominee for U.S. Court of Appeals for the Ninth Circuit: “**But there is nothing really inherently wrong with the University failing to punish an alleged rapist—regardless his guilt—in the absence of adequate certainty; there is nothing that the University can do to objectively ensure that the rapist does not strike again.**”

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Wendy Vitter, confirmed United States District Judge of the United States District Court for the Eastern District of Louisiana: “**Planned Parenthood says they promote women’s health. It is the saddest of ironies that they kill over 150,000 females a year.**”

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The Threats on the Table

Stopping these nominees is an uphill battle, but thanks to the dedicated leadership of advocates across the country, it's certainly not impossible. In fact, the work of activists, particularly LGBTQ+ rights activists, led to the removal of Jeff Mateer from consideration. As the Senate prepares to hear testimony for more potential members of the United States Judiciary, it's important to know who and what we are up against so that we can stop them. Two of the greatest threats are Steven Mensashi, nominee to the United States Circuit for the Second Circuit, and Sarah E. Pitlyk, nominee to the United States District for the Eastern District of Missouri. Both nominees have been brought before the Senate Judiciary Committee for a hearing and are awaiting further action.

Steven Menashi On the Issues

Steven Menashi is the nominee for the United States Circuit Court for the Second Circuit. In his career, he worked as a law clerk to Supreme Court Justice Samuel Alito from 2010 to 2011; he worked at Kirkland & Ellis LLP law firm in New York from 2011 to 2017; he filled first the Acting General Counsel and then Principal Deputy General Counsel roles at the Department of Education from 2017 to 2018; and he currently serves as Donald Trump's special assistant and associate counsel.

While at the Department of Education, he was "responsible for providing legal advice on ALL aspects of the Department's operations, including litigation, rulemaking, regulation, and enforcement."³⁹ He has been significantly less forthcoming about his role in the Trump White House, though it is public knowledge that he worked on the Administration's immigration policy.⁴⁰ His failure to disclose the particulars of his work in the White House led to great frustrations at his confirmation hearing. In fact, Senator John Kennedy (R-LA) said, "You're really a smart guy but I wish you would be more forthcoming. This isn't supposed to be a game. We're supposed to try to understand not how you're going to rule but how you're going to think."⁴¹

Senator Kennedy is far from the only one with concerns. Check out where Menashi stands on the issues:

AFFIRMATIVE ACTION

Menashi compared the practice of affirmative action to the horrors of the Holocaust, "Sixty years after the promulgation of the Nuremberg laws, universities persist in cataloguing students according to race on college applications and official documents."⁴²

REPRODUCTIVE HEALTH AND RIGHTS

Menashi has long since argued in opposition of abortion rights. He said, "legal abortion has led to clearly undesired moral consequences," and has referred to birth control as "abortifacients," or a substance that induces abortion.⁴³

LGBTQ+ RIGHTS AND EQUALITY

Menashi refers to LGBTQ+ rights as a "deviation from political decency."⁴⁴

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The Threats on the Table (cont'd)

SEXUAL VIOLENCE

As the Department of Education's Acting General Counsel, he worked closely with the Administration to roll back Obama-era guidance and to propose a new Title IX rule that would strip survivors of their access to justice. As End Rape on Campus and Know Your IX stated, "The new rule will stop survivors from coming forward and make schools more dangerous for all students." Menashi also criticized Take Back the Night marches, stating the marches "charge the majority of male students with complicity in rape and sexual violence (every man's a potential rapist, they say, it's part of the patriarchal culture)."

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RACE AND ETHNOCENTRISM

Menashi argued against diverse communities on the grounds that "ethnically heterogeneous societies exhibit less political and civic engagement, less effective government institutions, and fewer public goods."

Menashi also defended Italian Prime Minister Silvio Berlusconi's Islamophobia: "Appearing in Germany shortly after the September 11 terrorist attacks, the Italian prime minister said: 'We must be aware of the superiority of our civilization, a system that has guaranteed well-being, respect for human rights, and in contrast with Islamic countries respect for religious and political rights.' Mr. Berlusconi **did nothing other than state the obvious.**"

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IMMIGRATION

Menashi worked with Stephen Miller and the Trump Administration on its immigration policy, though refused to clarify the facts of the role he played. He did offer, "I have provided advice to policymakers within the White House on many policy issues including immigration."

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HEALTHCARE

After using the drug Humira to treat psoriasis, a 15 year-old boy developed pediatric leukemia. Though Humira was aware of this risk, it failed to communicate that information on the label. Menashi argued that the boy's family should not be able to hold Humira accountable.

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SCHOOL VOUCHERS

Menashi believes that school vouchers would "restore taxpayers' property rights."

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STUDENT AID

Menashi has opposed "need-based financial aid explicitly because it purportedly hurts the wealthy."

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MONEY IN POLITICS

Menashi opposes any limitations on campaign contributions, stating that "When the Congress decided to restrict such freedom by limiting political contributions, it led politicians to resort to actual criminality."

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CLIMATE

Menashi opposed the Kyoto Accord, which was an international commitment to reduce greenhouse gas emissions; he believes courts need to limit the U.S. Environmental Protection Agency (EPA) in its efforts to protect climate, clean air and clean water.

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The Threats on the Table

Sarah E. Pitlyk On the Issues

Sarah E. Pitlyk is the nominee to the United States District for the Eastern District of Missouri. Currently, Pitlyk serves as special counsel for Thomas More Society, “a not-for-profit, national public interest law firm dedicated to restoring respect in law for life, family, and religious liberty.” Before that, Pitlyk worked at the Runnymede Law Group, a law firm created by another Trump nominee for a federal judge seat, Stephen R. Clark, and for Clark and Sauer LLC, a predecessor firm. Pitlyk’s anti-abortion work started at an early age: while in college, she founded Yale’s “Students for Life” chapter.⁵³

Check out where Pitlyk stands on the issues:

AFFIRMATIVE ACTION

In 2013, Pitlyk signed an amicus brief on behalf of the Attorney General of Michigan to end the state’s practice of affirmative action. She argued that affirmative action and programs similar in nature “unjustly impose the costs of remedying past discrimination on individuals who have no personal responsibility for prior wrongs...[and] entrench racial prejudices, rather than alleviate them.”

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REPRODUCTIVE RIGHTS

“Pitlyk fought a law that would have prevented landlords from evicting their tenants and employers from firing their employees for using birth control or becoming pregnant before marriage.”⁵⁵

Pitlyk has argued, “surrogacy has grave effects on society, such as diminished respect for motherhood and the unique mother-child bond; exploitation of women; commodification of gestation and of children themselves; and weakening of appropriate social mores against eugenic abortion.”⁵⁶

Pitlyk served on the legal team to defend David Daleiden, who “deceptively edited videos” designed to attack Planned Parenthood.⁵⁷

Pitlyk defended Iowa’s fetal heartbeat law that would add severe bans on abortion.⁵⁸

BRETT KAVANUAGH

Pitlyk, a former clerk for Brett Kavanaugh, said of Dr. Christine Blasey Ford’s testimony, it’s “[h]ard to take it seriously... in light of the transparently politically-motivated manner in which it has come to light... it defies credibility to believe that it is just a coincidence.”

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HEALTHCARE

Pitlyk reflected that the Supreme Court’s decision to uphold the Affordable Care Act was a “disastrous ruling” and an “unprincipled decision.”

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Do Something

Take a stand and make your thoughts heard. We ask that in your outreach you do not state that your opinion is the official stance of Platform, unless it is taken from our Platform Pledge. But you can certainly give AFJAC and us a shoutout for having the conversation.

Blog It

We know you have something to say!

Walk us through your perspective and rally people to your cause. Your posts will be featured on our website and social media.

Email your blog to: media@platformwomen.org, include "Blog Post" and a title in the subject line

Get On Social Media

This isn't "slacktivism!"

According to a report from the Congressional Management Foundation, which surveyed Congressional Staff, "71 [percent of respondents] said social media comments directed to the Member/Senator by 'multiple constituents affiliated with a specific group or cause' would have 'some' or 'a lot' of influence on an undecided lawmaker." There you have it — tweet, Instagram, and post away on Facebook. #GiveMeAPlatform and #CourtsMatter.

[@PlatformWomen](#) | [@AFJAction](#)

Contact Your Senator

You have a right to be heard!

The nomination of judges like Steven Menashi and Sarah Pitlyk are a threat to our rights and our ability to live safely and fully. They must be stopped and we need your help to prevent the confirmation of these nominees. Tell your Senator, over the phone or in a written letter, to vote no.

To Call:

Visit Alliance For Justice Action Campaign's "[Don't Trump Our Courts](#)" Campaign for all the deets. Not sure what to say? AFJAC's got you covered:

Hi, my name is [name], and I'm a constituent from [city]. I'm calling because the state of our judiciary is alarming and concerning. Federal judges receive lifetime appointments on federal courts, meaning they have the power to shape our laws for the next generation. Trump's judges are not representative of our country, with 77% of his nominees being male and with 86% of them being white. Many of Trump's nominees have records of hostility towards reproductive rights, LGBTQ+ rights, environmental protections, workers' rights, consumers' rights, and more. I urge Senator [name] to vote no on any Trump nominee that favors the interests of the wealthy and powerful elite over equal rights and protections for all. Please stand up to defend the rights of all and stand against the power grabs by the Trump Administration and Mitch McConnell. Thank you.

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Do Something (cont'd)

Contact Your Senator (cont'd)

To Write:

Write a letter to your lawmakers calling on them to take action to stop Trump's nominees. A handwritten-personal note can go a long way because nominees are not just figureheads, they impact the realities that YOU live. And who better to give voice to those realities than you? This letter is a chance for lawmakers to learn from you, in your own words. We want to affirm, you do not owe anyone what is in your heart and mind. Only share what you feel comfortable sharing.

1. To start the letter, address your lawmaker by title, i.e. "Dear Senator (name)."
2. Then, introduce yourself to let them know they need to listen to you. Are you a voter and/or student in their district? Do you have other connections to the district? Let them know right away.
3. If you and your peers/colleagues are writing your own letters, but sending them in together, let your lawmakers know you are part of a group. There is power in numbers.
4. Next, tell them why you care — that's your story. Why do you show up and speak out against these nominees? Why are you taking the time to write this letter?
5. Once you capture their attention and make clear that the time to stop Trump's nominees is now, tell them what action you specifically want them to see (i.e. a vote "no" on Menashi and Pitlyk and a public statement on why they are wrong for the court).
6. Close by letting them know you plan to stay active on this issue until change is realized.
7. Provide contact information so they can follow up with you (if you feel comfortable).
8. Finally, when addressing the envelope, refer to the lawmaker as "The Honorable (name)."

Spread the Word

Get your neighbors in on the action by writing a "letter to the editor" for the local paper to show your Senator that your perspective is home-grown and deeply rooted in your community. But hey- feel free to dream big and go to the national news- we're not stopping you! Ready to get writing? AFJ has the tips:

Be timely, brief, and clear.

Check the guidelines of your local paper, and make sure you stay within its limits on length.

Connect to your community. Make it clear why the people in your area should be concerned and how they would be impacted by the nominee's confirmation.

Find a news hook. Check your local paper and see if there is a recent article or event you can respond to. Make sure you refer to the article by name and date.

Give the people something to do. Organizing 101 teaches us that the best way to mobilize people for your cause is to give them a direct call to action. Make your ask specific.

Keep it coming. Call on your network, colleagues, family and friends to add their name to the cause by submitting their own letters. This way the newspaper can't ignore you.

Flag it for your senators. The goal of the letter is to reach the powers-that-be, but don't wait for chance. Send a copy, either by mail, or email to your senator so they know you and your community are paying attention.

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