

COLUMNISTS & LEGAL EXPERTS RECOGNIZE NEED TO FILL D.C CIRCUIT U.S. COURT OF APPEALS & HOLD YES-OR-NO VOTES ON NOMINEES

EXCERPT/LINK Highlights from [hundreds of columns & Op-Eds](#) by Republicans, a former D.C. Circuit Chief Judge; academic and think tank court experts, national columnists, and columns and Op-Eds in AR, AZ, FL, IA, ME and other states

[Save the filibuster!](#) (*Politico*, 08/20/13)

RICHARD A. ARENBERG: "They are at it again. Republicans in the Senate are taking the unsupportable position that three existing D.C. ... Circuit Court vacancies should not be filled. They claim that President Obama wants to "pack" the court, FDR style. But their real concern is about the ideological direction of the court, not its size." *Richard A. Arenberg worked on Senate and House staffs for 34 years, co-author of "Defending the Filibuster: The Soul of the Senate" adjunct professor at Brown University, Northeastern University and Suffolk University.*

[Another View: Collins breaks her word in filibuster of judicial nominee; A recent attempt to block an appointed judge shows she thinks we're not paying attention.](#) (*Portland Press Herald [ME]*, 08/04/13)

Toby Hollander: "Sen. Collins was a member of the "Gang of Eight" that ... agreed that they would not filibuster a judicial appointee unless they had a good-faith opposition based upon a serious ethical or qualification basis. Recently, she has filibustered the appointment of a judge to the U.S. Court of Appeals for the D.C. Circuit but said she would be pleased to support her nomination to any other judgeship, essentially conceding qualifications. The significance of this is that she broke her word about using filibusters on judicial nominations. (Her justification in this case? "There are too many judges sitting on that court.") If that is her objection, it violates her word as the "Gang of Eight"!"

[Harry Reid should be ready to go 'nuclear' over judicial nominees](#) (*Los Angeles Times*, 08/02/13)

Opinion L.A., from the 'Times' Opinion Staff, By Michael McGough: "Republicans are threatening to obstruct Obama's nominees to an important appeals court. If they persist in their obstructionism, Reid should open the briefcase with the launch codes.... all of the Republicans on the Senate Judiciary Committee voted against the nomination of Patricia Millett, ... for one of three open seats on the U.S. Court of Appeals for the District of Columbia Circuit.... Sen. Charles E. Grassley, the ranking Republican on the Judiciary Committee, has introduced legislation to abolish the three seats Obama plans to fill ... The GOP argument that Obama wants to "pack" the court -- a la FDR's attempt to add seats to the Supreme Court in the 1930s -- is a laughable exercise in projection. It's the Republicans who want to manipulate the size of the D.C. Circuit to keep it from moving in a leftward direction ... The GOP argument that Obama wants to "pack" the court -- a la FDR's attempt to add seats to the Supreme Court in the 1930s -- is a laughable exercise in projection. It's the Republicans who want to manipulate the size of the D.C. Circuit to keep it from moving in a leftward direction ... If they do decide to filibuster Millett or Obama's other judicial nominees, Reid should drop the big one."

[D.C. Circuit Underworked, Say Anonymous Letters Possibly From Federal Judges](#) (*Above the Law*, 08/02/13)

JOE PATRICE: "Grassley's been pushing the "D.C. Circuit judges are basically on year-round vacation" argument for awhile now, and it's still dumb....his survey is kind of a joke. It's most likely these responses came from judges, but Grassley explicitly asks the judges to "refrain from signing or otherwise indicating authorship in order to guarantee anonymity," so really who knows what individual hanging around the D.C. Circuit actually wrote these responses....Hardly scientific. It's easy to get someone to say something incredibly stupid anonymously. ...an anonymous survey of such a small, high-profile group loses the value of fact-checking and refutation."

[The Nuclear Senate, Defused](#) (*Washington Monthly*, 07/22/13)

Sarah Binder, professor of political science at George Washington University and a senior fellow at the Brookings Institution.: "GOP arguments against Obama's three recent nominees for the D.C. Court of Appeals have a ring of overreach in them: It's not the nominees they object to, but the size of the court on which they would serve. We'll see if such an argument is more successful when lodged against judicial nominees soon enough."

[Sen. Collins errs in support of court plan](#) (*Seacoastonline [Southern ME & NH]*, 07/07/13) Douglas Rooks Op-Ed

[Why is Susan Collins backing Grassley move on appeals court judges?](#) (*Sun Journal [ME]*, 07/07/13)

Douglas Rooks, former daily and weekly newspaper editor: "it was curious that Collins would invest her credibility in Sen. Charles Grassley's campaign to "reform" the District of Columbia [U.S.] Court of Appeals – the nation's most important court ...Grassley wants to reduce the D.C. Circuit court's number of justices from 11 to 8, supposedly because the court has an insufficient workload, and transfer the seats elsewhere. This is a ludicrous contention. ... In a recent op-ed, Collins repeated the misleading arguments about the D.C. court's workload. ... Two wrongs don't make a right. Democrats blocking a single nomination in 2006 hardly justifies Republicans blocking three nominations in 2013..... Susan Collins wants it both ways – to appear as a moderate even though she's supporting a transparently partisan plan to block judges."

[Here comes Senate showdown July](#) (*Washington Post*, 07/03/13)

Jonathan Bernstein: "The Senate Judiciary Committee announced today that it will hold a hearing next Wednesday for the first of the three D.C. Circuit court nominees, Patricia Millet....We still don't know — Republicans don't seem to know — whether Millet and the other two recent D.C. Circuit court nominees will be widely opposed by Republicans, or just receive some relatively token opposition. Indeed: As long as there are six votes for cloture, most Republicans can oppose them, and every single Republican can vote against final confirmation without stopping them....I don't think there's any good justification for blockading the D.C. Circuit court (not approving any nominee),"

[Mitch McConnell's Not-Very-Threatening Filibuster Threat](#) (*New York Magazine*, 06/18/13)

Jonathan Chait: "On judges, Republicans had threatened to eliminate the filibuster for judicial nominees under Bush, until Democrats agreed never to filibuster a judicial nominee except under "extraordinary circumstances." Now Republicans have taken to filibustering Obama's nominees under the most ordinary circumstances, having blocked Caitlin Halligan

because she represented her state in a gun lawsuit as Attorney General, and are now threatening to block any nominees at all for the D.C. Circuit Court.

[GOP should play fair on D.C. court nominations](#) (*Arizona Republic*, 06/16/13)

Linda Valdez, columnist: "President Barack Obama nominated three qualified candidates to the federal appeals court in D.C. The court was fully staffed when George W. Bush was president. Now that a Democrat is in the White House, Republicans want to reduce staffing. Hey, can you play fair? The D.C. court has three vacancies and is split 4-4 between GOP and Democratic appointees. Obama said the GOP opposition to his picks is "partisan obstruction." No kidding. His judicial nominations deserve a vote."

[Stop playing politics with federal court](#) (*Bangor Daily News [ME]*, 06/16/13)

Opinion by Megan D. Hannan: "When Kayatta was confirmed in February — 13 months after his nomination — Collins said, "The people who rely on the United States Court of Appeals for the First Circuit waited far too long for a full complement of judges."... But also on May 23, Collins signed on as a cosponsor of legislation proposed by Sen. Chuck Grassley, R-Iowa, to eliminate the three vacant positions on the D.C. court.... Collins voted to confirm three judges to that court when George W. Bush was president, including twice voting to fill the 10th seat and once to fill the 11th seat.... President Barack Obama recently presented three new nominations to the D.C. Circuit. Call on Collins to stop playing politics with the court system, to end the filibusters to all federal courts, and to vote on these nominees, one way or the other."

[June Girard: Don't be distracted by Obama's supposed scandals](#) (*Gainesville Sun [FL]*, 06/15/13)

"The real scandal is the unprecedented obstructionism regarding judicial and executive branch nominees. Currently there are three nominees for the D.C. Circuit, which is just below the Supreme Court, that handles all cases invoking federal and executive power. ...No movement by Congress for these important jobs is a scandal."

[Much Ado About Court Packing](#) (*CityBeat [Cincinnati, OH]*, 06/12/13)

BEN L. KAUFMAN column: "The latest example to set my teeth grinding is the GOP accusation that Obama is trying to "pack" the U.S. Court of Appeals for the D.C. Circuit. There are three vacancies. Obama nominated three lawyers for the Senate's "advice and consent." Accusations of court packing come from Sens. Chuck Grassley of Iowa and Mitch McConnell of Kentucky. ... Why reporters and opinion writers stenographically repeat GOP "packing" accusations is beyond me unless they don't know what court-packing means.... By any rational understanding, the latest iteration of GOP opposition to anything a liberal president proposes is not "court packing." Reporters who go along unquestioningly because Grassley and McConnell are GOP leaders, even when Republicans shamelessly prevaricate, are complicit in misleading voters. ...McConnell/Grassley accusations foreshadow a nasty fight over Obama's three nominees as well as the already dilatory treatment of other federal judicial candidates. That, and not "court packing," is what reporters should be digging into."

[Column: Duh, it is president's job to nominate judges; It is time for the Senate to do its job by confirming D.C. Circuit Court nominees.](#) (*USA Today*, 06/12/13)

Doug Kendall: "the president understands that to overcome Senate obstruction of his judicial nominees, he must make Republicans defend their arguments in the spotlight of national scrutiny. These arguments wither in the light of day. For example, Senate Republicans argue that the D.C. Circuit is underworked, even though the court handles

some of the most difficult and complex questions presented to the federal judiciary. It is also the inconvenient truth that just a few years ago many of these same Republican senators pushed hard to confirm President Bush's nominees to these very same seats."

[Obama, Congress fight over judges](#) (*Miami Herald*, 06/07/13)

Opinion by EMILY BAZELON: "The president needs these judges to cement his own legacy, since the D.C. Circuit is second in importance only to the Supreme Court. Obama is also safeguarding the power the Constitution gives every president to select federal judges. It's the Senate's job to advise and consent, but that is not supposed to mean automatic stonewalling by the minority, which Republicans have done much of since Obama took office."

[Court Packing Vs. Court Filling | Commentary](#) (*Roll Call*, 06/07/13)

Leslie M. Proll: "as Grassley surely knows, nominating three judges to fill existing vacancies on one appellate court is not "court packing." ... Rather than Obama engaging in "court packing," Grassley is now trying to engage in "court shrinking" by introducing legislation to reduce the number of judges on the D.C. Circuit. This effort is a shockingly transparent effort to deny the president his constitutional right to nominate federal judges to fill vacant seats. Grassley's action also ignores the unique and important nature of the D.C. Circuit, which enjoys special jurisdiction to hear cases that go to the very function of the federal government. Chief Justice Roberts wrote an article in 2006, titled "What Makes the D.C. Circuit Different? A Historical View," in which he identifies all the distinctions between the D.C. Circuit and other appellate courts."

[ARKANSAS POLITICS Tom Cotton says president is "court packing" by filling statutory vacancies](#) (*Arkansas Times*, 06/06/13)

David Ramsey: "If there is a nonsensical argument to make against President Obama, Cotton will leap to the head of the line. This week's entry is the hilariously titled "Stop Court Packing Act," introduced by Cotton with no co-sponsors in response to Obama nominating three judges to the U.S. Court of Appeals for the D.C. Circuit. Cotton proposes to instead eliminate the three positions Obama is attempting to fill... changing the number of judges on a court in order to influence its ideological makeup — as Cotton proposes to do — is itself the kind of gross power grab that made FDR's attempted stunt so shocking. Cotton is proposing court packing in reverse."

[The GOP Tries to Pink-Slip Obama's D.C. Court Picks](#) (*Business Week*, 06/06/13)

Paul M. Barrett: "The Iowa lawmaker and his Republican allies are not the first to attempt to use judicial head counts to sculpt the federal courts to their liking. President Franklin Roosevelt's ultimately thwarted 1937 "court packing" plan would have expanded the Supreme Court by six members ... Grassley's bid to unpack the D.C. Circuit obscures another distinctive characteristic of that bench,... The many regulatory agency appeals that Chief Justice Roberts referred to are among the most complicated cases in the land. They pertain to the meaning and application of hellishly detailed rules governing financial markets, industrial pollution, electricity distribution, labor relations, and product safety. ... Raw case counts, without reference to case content, don't tell the whole story. Just ask Roberts. In April the Judicial Conference of the United States, an administrative body headed by the Chief Justice, himself a Republican appointee, told Congress that to juggle its dense docket, the D.C. Circuit needs all 11 judges."

[What is Obama fighting for in his second term?](#) (*Washington Post*, 06/06/13)

E.J. Dionne Jr. column: Given a president's power, he has many ways to alter the media agenda, and he seized on some of them this week. On Tuesday, Obama announced three nominees to the U.S. Court of Appeals for the District of Columbia Circuit, directly confronting Republican obstruction of his judicial choices. Obama should have taken on this battle long ago, but it was a welcome step."

[Cotton nitpickin'](#) (*Arkansas Democrat Gazette*, 06/06/13)

Column By John Brummett: Rep. "Cotton put in a bill Tuesday seeking to reduce the number of judgeships in the Washington, D.C.- based appeals court circuit. He accused President Obama of trying to pack that court with three simultaneous nominations, which were announced that day. Actually, the judgeships and their vacancies have long existed and Obama had nothing to do with creating the judgeships. So Cotton calls the president a court-packer for trying to fill pre-existing vacancies....it's curious that Cotton seeks to reduce the authority for 11 only when the president seeks to fill the vacancies."

[Is the D.C. Circuit last in 'almost every category'?](#) (*Washington Post*, 06/06/13)

The Fact Checker, by Glenn Kessler: "Grassley claimed that "no matter how you slice it," the D.C. Circuit ranks last or almost last in just about every category that measures workload. But you can't just assert that one appeals filing is equal to another — or that one set of statistics is better than another. Depending on the metrics, the D.C. Circuit could very well be in first place. Two Pinocchios"

[Judicial appointments: A lesson in packing](#) (*Economist*, 06/05/13)

"Republicans have dragged out or stopped the confirmation of many of Mr Obama's judges. Although he confirmed about as many judges in his first term as George W. Bush did, he had many more vacancies to fill. As a result, the number of vacancies has steadily climbed. They rarely reached 50 during Mr Bush's tenure, but were regularly around 100 in Mr Obama's first term.... it is Mr Grassley's bid to eliminate three vacancies which Mr Obama would otherwise fill that looks most like an attempt to rig the court in an unashamedly partisan direction."

[Where Is Axelrod's Mustache? Obama on the Court -- Now and Later?](#) (*Huffington Post*, 06/05/13)

Douglas Kmiec: "For the Republicans to claim that they are merely preventing Obama court-packing is nonsensical. Court-packing is what Adams succeeded at in theory, and what FDR attempted: it involves structural manipulation of potentially lasting effect; that is, increasing seats until his appointees for these newly minted positions overwhelmed his existing judicial naysayers about his economic regulation. By contrast, President Obama is merely attempting to fill three existing vacancies. Both of Obama's appointments to the high bench have been proven to be excellent in every regard."

[Vacancy Packing: Obama Emerges From His Five-Year Appeals-Court Nap](#) (*National Journal*, 06/05/13)

Major Garrett column: "Caseloads matter, but every court-watcher knows the D.C. Circuit handles appeals of vast complexity and regulatory reach. ...Republican accusations that Obama is trying a "court-packing" maneuver on the D.C. Circuit also fall into this category. Grassley's legislation would have more credibility if he scrutinized the D.C. Circuit caseload during the George W. Bush years, instead of voting to confirm his nominees (see Janice Rogers Brown and Thomas Griffith in 2005 and Brett Kavanaugh in 2006). Obama cannot

pack a court by filling vacancies. Republicans and Democrats can, as press secretary Jay Carney said Tuesday, court-pack in reverse by denying presidents their nominees via filibusters instead of up-or-down votes. But the federal bench has seen enough—actually, far too much—of that. Obama won and is entitled to appoint nominees to the bench."

[**The Truth-O-Meter Says: FALSE on Sen. Chuck Grassley's claim that President Barack Obama is trying to "pack" the D.C. Circuit Court of Appeals**](#) (*Tampa Bay Times [FL]*, 06/05/13)

PolitiFact.com: "Genuine court packing has involved one branch of government proposing to change the structure of the courts, either expanding or decreasing the number of judges. That's not what Obama's doing. We rate the claim False"

[**Obama Picks Pawns In Political Fight As GOP Aims To Cut Down DC Circuit: Senator Chuck Grassley wants to reduce the number of judges on the powerful DC Circuit—just as the president aims to fill its vacant seats.**](#) (*Daily Beast*, 06/05/13)

Eleanor Clift: "Forget about FDR," protests Grassley in a phone interview with *The Daily Beast*. He took great umbrage with the idea that what he's doing is political, pointing out that his concern about a bloated D.C. Circuit Court predate Obama. "I agreed with Bush 90 percent of the time, and I took away a seat from him. Just because I happen to disagree with Obama most of the time doesn't have anything to do with it."... There is a principled way to alter the size of a circuit court, and Grassley was part of a Senate effort in 2007 to reduce the D.C. court from 12 to its current 11 seats, shifting one seat to the Ninth Circuit Court in California with Democrat Dianne Feinstein's backing. Lawmakers made the change effective after the next election and without knowing which party would have the White House. They acted upon the recommendation of the Judicial Conference that oversees U.S. judges. And most significantly, the legislation was bipartisan. In the current situation, however, the Judicial Conference has not called for any change in the number of seats allocated.

[**Is This a Government Which I See Before Me?**](#) (*New York Times*, 06/05/13)

Gail Collins: "during the Obama years the Republicans have done an unprecedented amount of stonewalling on cabinet-and-below appointees. I would also argue that their war on judicial nominees has been way beyond what went before. Really, if the president nominated God to serve on the D.C. Court of Appeals, Mitch McConnell would threaten a filibuster."

[**Obama's Fight Song \(Finally\): The president is getting aggressive about his judicial nominees. It's about time.**](#) (*Slate.com*, 06/04/13)

Emily Bazelon: "The president needs these judges to cement his own legacy, since the D.C. Circuit is second in importance only to the Supreme Court. Obama is also safeguarding the power the Constitution gives every president to select federal judges. It's the Senate's job to advise and consent, but that is not supposed to mean automatic stonewalling by the minority, which Republicans have done much of since Obama took office. It's time to take the fight to them rather than sit back. Nominating three candidates at once makes the problem of judicial vacancies far more visible than it has been since Obama was elected. That should up the political price for GOP obstructionism."

[**HERE COME THE JUDGES...MAYBE**](#) (*Esquire*, 06/04/13)

Charles P. Pierce: It is not "packing" a court to fill three seats on that court that are vacant. ... It is not "packing" a court to fill three seats on that court that are vacant."

[**The D.C. Circuit nomination wars have begun**](#) (*Washington Post*, 06/04/13)

Jonathan Bernstein: There is nothing special — at all — about a president making

nominations for judicial vacancies. It isn't a "challenge" to Republicans, no matter what spin either the White House or Senate Republicans put on it. ... Actually blockading these seats — a commitment by Republicans to defeat by filibuster anyone Obama nominated to any of the three open spots — would be unprecedented. And unjustified. And unsustainable; Harry Reid and the Democrats would surely go nuclear if that's what Republicans choose to do."

[Obama's Nominees Are Widely Respected Within the Bar](#) (*National Law Journal*, 06/04/13)

Mike Scarcella and Zoe Tillman: "There was little concern Tuesday about the qualifications of President Obama's nominees to the U.S. Court of Appeals for the D.C. Circuit."

[Talking Through Their Hats: Senate Republicans Opposed to President Obama's D.C. Circuit Court Nominees](#) (*Huffington Post*, 06/04/13)

Sidney Shapiro, Professor, Wake Forest University Law School: "the Republican effort to block President Obama's nomination of three distinguished lawyers to fill longstanding vacancies on the D.C. Circuit Court of Appeals by eliminating the open positions. The GOP claims the appointments are unnecessary because the circuit doesn't need the judges -- describing the nominations as "court packing." What utter nonsense! ... The obvious reason that the GOP opposes the nominations is that filling these long-vacant seats will mean that more judges on the court will have been appointed by Democratic presidents than Republican ones. That, of course, is what happens when we have elections. In that sense, the opposition is more than nonsensical; it is an effort repeal the system established by the Constitution for the appointment of judges."

[The nasty fight over Obama's D.C. Circuit nominees](#) (*Washington Post*, 06/04/13)

Stephen Stromberg: "The D.C. Circuit has three open seats. Obama is not trying to create new ones using some kind of FDR-era trickery, as Republicans are implying. He has every right to nominate men and women to each of those spots, and it is the Senate's duty to give them each a fair hearing. ... True, Republican senators can always try to formally reduce the size of the court. That is their right. But that move would contradict the non-partisan judicial conference, which just asked the Senate to hold the court at its current size. In the context of an already very-political dispute, slashing the size of the court would be a very dangerous line to cross. It would inject even more partisanship into the judicial nomination process, and Republicans would deeply regret their decision the next time a Republican president wanted to get his or her nominees on the bench."

[Court-packing in GOP dreams only](#) (*Washington Post*, 05/31/13)

Ruth Marcus: "At the risk of repeating history that should be obvious to anyone entrusted with the authority to offer advice and consent, FDR's court-packing scheme deserved that derogatory phrase. Roosevelt proposed expanding the number of justices on the Supreme Court in order to add members more sympathetic to the New Deal. Obama's diabolical plan? To submit nominees to the lower court for existing vacancies. ... Grassley and his fellow Republicans expressed no qualms about confirming nominees to the 9th, 10th and 11th seats on the D.C. Circuit during the George W. Bush presidency. Nothing has changed, except the occupant of the Oval Office. More important, the caseload numbers do not tell the whole story. The regulatory disputes that make their way to the D.C. Circuit can be notoriously complex and time-consuming; the 11th Circuit numbers are inflated by a large number of prisoner petitions, which are easily disposed of. ...it is outrageous to accuse Obama of overstepping in daring to try to fill these vacancies. Republicans aren't unhappy

about the size of the court. They're unhappy about the president elected to make appointments to it."

[**Obama: Finally Ready to Fight? What Obama's upcoming announcement of three nominees to the DC Circuit could mean for the future of the judiciary—and his presidency**](#) (*Daily Beast*, 05/30/13)

Michael Tomasky: "Odds are that McConnell may ultimately let McCarthy through, I'm told, but will move heaven and earth to block Perez, and either one or two of the judicial appointments, depending on how much heat he's feeling inside his caucus....Republicans are doing the usual crazy, calling Obama's effort "court-packing"—which it is not; ... and even putting forward legislation to eliminate the three vacant seats!"

[**It Might Finally Be Time for the 'Nuclear Option' in the Senate;**](#) (*Atlantic*, 05/30/13)

Norm Ornstein, American Enterprise Institute: "Watching Sen. Chuck Grassley this week rail against President Obama for "court packing" made me laugh out loud. I laughed for several reasons. One was wondering whether a senior senator and longtime member of the Judiciary Committee really had no idea what court packing is, or was he reaching for new heights of disingenuousness: How could a move by a president simply to fill long-standing existing vacancies on federal courts be termed court packing?"

[**The G.O.P.'s Court-Shrinking Plan**](#) (*New York Times*, 05/30/13)

Editorial Page Editor's Blog by David Firestone: "now they are angry that Mr. Obama is daring to nominate three judges to long-open seats on the Court of Appeals for the District of Columbia, where one seat has been empty since 2005. Senators Mitch McConnell and Charles Grassley have accused the White House of "court-packing," apparently hoping the public no longer remembers the real meaning of that term. (It refers to F.D.R.'s attempt to add more seats to the Supreme Court to get the rulings he wanted. It has nothing to do with filling existing vacancies.) It's Mr. Grassley, in fact, who wants to pull an F.D.R. in reverse, talking openly about shrinking the D.C. Circuit so that Republican-appointed judges can remain in the majority there. The circuit court has overruled the Obama administration on several important regulatory issues, and Republicans want it to continue doing so."

[**NO VACANCIES**](#) (*Esquire*, 05/29/13)

Charles P. Pierce: This will be -- and damned well ought to be -- a serious fight. The court in question has been a source of conservative vandalism for as long as it has been essentially understaffed.... The Republicans want to keep it that way, and the way you know that they do is that they've replaced serious political discussion with hypocrisy so bald-faced it doesn't even look like they're trying very hard any more.... Putting the proper number of judges on the court is "stacking" the court. But filing legislation to cut the number of judges permanently by three is an act of leadership. At this point, Lewis Carroll gets out of the business and takes a job writing greeting cards."

[**A Legacy Litigated: President Obama better get his judges appointed. Because his legacy will be decided in the courts.**](#) (*Slate.com*, 05/29/13)

Emily Bazelon: "President Obama is finally getting serious about the U.S. Court of Appeals for the District of Columbia Circuit. The federal appeals court is second only to the Supreme Court in importance, because it referees fights about the power of federal agencies and the rulings they make (and also because it's a traditional feeder to the high court)."

[**Sorry, Chuck Grassley. Obama isn't 'packing the court.'**](#) (*Washington Post*, 05/23/13)

Dylan Matthews: "Sen. Chuck Grassley (R-Iowa) used a hearing on Srinivasan's nomination

to accuse the Obama administration of trying to “pack” the D.C. Circuit. And then repeated the accusation another five times. The only problem, as his colleague Sheldon Whitehouse (D-R.I.) gently pointed out, was that the term does not mean what Grassley thought it meant"

[**The Climate-Change Wars Begin This Summer**](#) (*New York Magazine*, 05/22/13)

Jonathan Chait: "Bush's judges on the D.C. Circuit have inserted themselves even more heavily into the policy debate by striking down a slew of regulations in health care, pollution, labor, and other areas, turning the court into one of the right's most potent weapons during the Obama era. Since President Obama took office, four vacancies have opened on the D.C. Circuit Court, and Obama has not managed to seat a single justice to fill any of the slots. Republicans have displayed a willingness to filibuster even mainstream nominees, like Caitlin Halligan, who recently withdrew ... The Republican line has been set out most enthusiastically by the comically mendacious Wall Street Journal editorial page, which has long recognized the primacy of the D.C. Circuit and fervently taken up whatever procedural stance is required to increase the court's Republican tilt. ... The most recent Journal editorial is the most unbelievable of them all. Its primary contention is that the D.C. Circuit is filled with underworked slackers, thus rendering any additional nominees unnecessary. The Journal never mentioned this during the Bush years, when it was urgently demanding that Republican judges fill every last vacancy ("it's time for the remaining nominees to have the up-or-down floor votes they deserve"). But having suddenly discovered the plague of slothfulness on the D.C. Circuit, it has embraced the cause of shrinking the court as a first-order principle. In actual fact, the D.C. Circuit is actually so overloaded with cases — its heavy policy load makes its docket especially technically demanding — that it has leaned on a panel of retired judges to hear its overflow cases. ... The Republicans don't have the votes to actually pass their plan to eliminate all vacancies. Its function is to serve as justification for filibustering any nominees at all, however moderate or well qualified, for the remaining three vacancies."

[**Another View: Grassley's reach hampers court**](#) (*Des Moines Register [LA]* , 05/22/13)

Doug Kendall: "First, Republicans manufactured a controversy over Caitlin Halligan, President Barack Obama's well-qualified nominee to the D.C. Circuit, and then torpedoed her confirmation through a partisan filibuster. Then the Republican members of the Senate Judiciary Committee, led by its ranking member, Chuck Grassley, R-Ia., took a startling step: They introduced legislation that would eliminate three of the 11 judicial seats on the D.C. Circuit"

[**Judicial Vacancies Typify Capital Dysfunction**](#) (*Wall Street Journal*, 05/13/13)

Gerald F. Seib, Capital Journal: "Openings on two of the nation's most important federal appeals courts—the Ninth Circuit in the West and the D.C. Circuit in Washington—have been unfilled since 2005.... the lion's share of the blame lies with the Senate, a body that's becoming an embarrassment to itself and that increasingly infects the rest of government with its paralysis.... judges still aren't being confirmed fast enough to keep up with the rate of attrition as older judges retire."

[**How to Stop Government**](#) (*New York Times*, 05/10/13)

ANDREW ROSENTHAL, editorial page editor: "Filibuster Abuse: The practice of halting Senate deliberation is an old one, practiced by both parties, but the current Republican caucus has taken it to new heights. They have filibustered an unprecedented number of President Obama's nominees. The District Court for Washington, D.C., perhaps the most

important appeals court in the land, has four of its 11 seats vacant. The last time the Senate confirmed a judge was in 2006. The Republicans have filibustered all of Mr. Obama's nominees because Republicans simply don't want him to appoint any judges to a currently conservative court, which rules on appeals involving federal regulatory agencies, and which has exclusive jurisdiction over national security matters."

[Packing the Courts 'The Federalist Society,' by Michael Avery and Danielle McLaughlin](#) (*New York Times*, 05/10/13)

Jeffrey Rosen book review: "“every single federal judge” appointed by the two Presidents Bush “was either a member or approved by members of the society,” including four Supreme Court justices: Antonin Scalia, Clarence Thomas, John Roberts and Samuel Alito. ... Far more than Presidents Obama and Clinton, Presidents Reagan and both Bushes cared intensely about the selection of judges. Brett M. Kavanaugh, now a judge on the United States Court of Appeals for the District of Columbia Circuit, said that George W. Bush “devoted more attention to the issue of judges than any other president.” Like his Republican predecessors, he promoted well-known legal academics who had been allies, and advisers, of the Federalist Society, ... if liberals want to take the courts back from conservatives, they have to recognize that ideas — and judicial appointments — matter."

[No Right to Know Your Rights](#) (*New York Times*, 05/09/13)

Editorial Page Editor's blog by Teresa Tritch: "a federal appeals court ruled for business, saying that to punish an employer for failing to post a notice would violate the employer's free speech rights. Let's hope business doesn't take a dislike to clearly marked exits. The fact is, notices are required for all manner of laws, in the workplace and elsewhere, and are entirely justified as long as they are reasonably related to the law, as is clearly the case with the N.L.R.A. rule.... It is no coincidence that the rule was struck down by the United States Court of Appeals for the District of Columbia Circuit. Four of the court's 11 seats are empty and no new judges have been confirmed since 2006, leaving the court with a marked pro-business, deregulatory bias at a time when Senate Republicans have delayed and blocked President Obama's judicial nominees."

[A challenge to Sen. King](#) (*Portland Daily Sun [ME]*, 04/29/13)

Columnist Robert Libby: "Filibuster has continued to block appointment of President Obama's nominee to the [D.C. Circuit] Court of Appeals; this court considers more cases of regulation of industry than any other court in the country. Senator Collins stated her opposition to Ms. Halligan's nomination was based on the adequate number of judges on the panel, no vacancy needed to be filled. So presently that court operates with fewer judges than ever and President Obama has not been able to seat a single nominee on that court in five years."

[Obama might be holding all the cards: Farmer](#) (*Star-Ledger Newark [NJ]*, 04/14/13)

John Farmer: "At the same time, Republicans are blocking or threatening to block a series of Obama nominees to judicial and executive positions. Sen. Chuck Grassley (R-Iowa) would go even further where judges are concerned. Despite a backlog of cases at the D.C. Circuit Court of Appeals, second only to the U.S. Supreme Court in importance, Grassley proposes eliminating three still-vacant seats on the court. Why? To prevent Obama from filing them with judges not vetted by the tea party, the NRA, the Heritage Foundation, the Wall Street Journal, Fox News and the rest of the ultra-conservative cabal."

[Obama's nominee to D.C. appeals court has implications for environmental policy](#) (PRI: *Public Radio International*, 04/11/13)

"Tom McGarity, a law professor at the University of Texas, said the D.C. court is especially influential on matters of the environment, because of laws that proscribe many actions taken by the EPA as only being reviewable at the D.C. court. He says many environmental groups believe Republicans are deliberately slowing down nominations to the court, in order to preserve its conservative nature. ... The vacancies on the court have led to a dramatic increase in the caseload for individual judges. "And the cases coming out of the D.C. circuit are slower and slower," McGarity said.... "The delivery of justice in this country is an important thing, and if we don't have enough judges, we're not going to get justice, or we're not going to get good justice," McGarity said.

[Republican Effort to Unpack the Court](#) (*New York Times*, 04/11/13)

JEREMY W. PETERS: "The plan, drafted by Senator Charles E. Grassley of Iowa and supported by at least a half-dozen other Republicans, would prevent Mr. Obama from filling three of the four vacant seats on the court, the United States Court of Appeals for the District of Columbia Circuit. Currently, four of the court's full-time judges are Republican appointees and three are Democratic appointees. There are supposed to be 11 full-time judges."

[Showdown on the D.C. Circuit Court](#) (*Politico*, 04/10/13)

Erwin Chemerinsky and Sam Kleiner: "Since 1948, every president except for Obama has had at least one of his nominees confirmed to the court. Obama cannot tolerate a filibuster of Srinivasan. If Republicans filibuster, he should break it. After the hearings, Obama should nominate a judge for each of the court's remaining three vacancies."

[Iowa View: Grassley is not taking justice system seriously](#) (*Des Moines Register [LA]* , 03/08/13)

Sue Dinsdale: "Sen. Chuck Grassley and the Senate Republicans have shown they care more about petty politics than our justice system. On Wednesday, they blocked a vote on an extremely competent judicial nominee for the U.S. Court of Appeals for the District of Columbia Circuit, Caitlin Halligan.... Sen. Grassley doesn't seem bothered that this court, often considered the second most important court in the country after the Supreme Court, has over a third of its 11 seats vacant, more than any other federal appeals court ... After voting to block Halligan's nomination, Sen. Grassley tweeted that Americans should "stop crying" over it. As ranking Republican member of the Senate Judiciary Committee, the senator should take our judicial vacancy crisis seriously. Currently there are 87 federal judicial vacancies across the country ... Every day a vacancy goes unfilled, justice is denied."

[Senate should move quickly to fill vacancies on D.C. Circuit](#) (*The Hill*, 03/05/13)

Prof. Carl Tobias: "Wednesday's cloture vote on D.C. Circuit nominee Caitlin Halligan is a valuable reminder that the D.C. Circuit, the nation's "second most important court," now experiences four vacancies in eleven judgeships. Indeed, this chief executive is the first in more than a half century who has appointed no D.C. Circuit judge. It is past time ... President George W. Bush did appoint four D.C. Circuit judges, including Roberts, so the court had eleven members before his Supreme Court elevation. ... Obama renominated Halligan and nominated Sri Srinivasan, the Principal Deputy Solicitor General, in June 2012 and renominated them on January 3, 2013 ... The new Senate must rapidly consider both excellent nominees."

[Senate should fill gaps in Court of Appeals](#) (*Bowling Green Daily News [KY]*, 03/02/13)

PATRICIA M. WALD: "The two D.C. Circuit nominees before the Senate are exceedingly well qualified. Caitlin Halligan served as my law clerk ... Sri Srinivasan, has similarly impressive credentials and a reputation that surely merits prompt and serious consideration of his nomination."

[Opinions: Senate must act on appeals court vacancies \[Print Headline: Holes in the D.C. Bench\]](#) (*Washington Post*, 03/01/13)

Patricia M. Wald: "The D.C. Circuit has 11 judgeships but only seven active judges. There is cause for extreme concern that Congress is systematically denying the court the human resources it needs to carry out its weighty mandates. ... The D.C. Circuit hears the most complex, time-consuming, labyrinthine disputes over regulations with the greatest impact on ordinary Americans' lives: clean air and water regulations, nuclear plant safety, health-care reform issues, insider trading and more. These cases can require thousands of hours of preparation by the judges, often consuming days of argument, involving hundreds of parties and interveners, and necessitating dozens of briefs and thousands of pages of record — all of which culminates in lengthy, technically intricate legal opinions. ... During my two-decade tenure, 11 active judges were sitting a majority of the time; today, the court has only 64 percent of its authorized active judges."

[Yet More G.O.P. Obstruction](#) (*New York Times*, 01/25/13)

Editorial Page Editor's Blog By LINCOLN CAPLAN: "they're delaying hearings for Srikanth Srinivasan, an exceptional and moderate candidate. ... Judge Wilkinson told Charlie Savage of *The Times*, "I think he's balanced, he's moderate, and he's deeply knowledgeable about law." ... The D.C. Circuit already has three vacancies and a fourth is expected soon out of 11 judgeships. At 60 percent capacity, they can't make expeditious rulings in significant cases about regulation of the environment, financial markets and other social and economic matters. The delay in Mr. Srinivasan's nomination is a pointed example of the broken appointment process and the enormous harm caused by the Senate's inability to do its job.

[Filling the federal bench: Obama needs to fight harder, and the Senate needs to give his nominees up-or-down votes.](#) (*Los Angeles Times*, 12/14/12)

Op-Ed, By Robert C. Post and Daniel Schuker: The federal judicial bench is dangerously understaffed ... The president has nominated candidates for 90% of the vacancies in the last four years. That is not out of line with Clinton and Bush Yet the Senate has confirmed only 75% of Obama's nominees. By contrast, the Senate confirmed 84% of Clinton's first-term nominees and a whopping 90% of Bush's. ... The Court of Appeals for the District of Columbia Circuit holds particular importance. ... The D.C. Circuit should have 11 active judges, but it now has only eight — and by early next year, it will have only seven."

[Is the D.C. Circuit Too Small To Go En Banc?](#) (*D.C. Circuit Review*, 05/29/12)

"The D.C. Circuit only rarely grants rehearing en banc. This term—as last term—the full court reheard only one case. ... the most fundamental reason for the D.C. Circuit's low en banc rate in recent years is the dwindling number of active judges eligible to vote for rehearing. (This should be—but to my knowledge is not—a common argument in favor of confirming D.C. Circuit nominees.) Since Judge Ginsburg took senior status last October, the court has had only eight active judges. That means that when a panel of three active judges issues a unanimous decision, as in *Cobell*, all of the other active judges on the court must vote in favor of rehearing for the case to go en banc—assuming the panel members vote to defend their decision. ... Three of the D.C. Circuit's eleven seats are vacant. Under these

circumstances, the odds of rehearing en banc are low even if, as Frank suggests, the panel opinion is beset by “obvious” errors.”