

# Why the D.C. Circuit Matters

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The U.S. Court of Appeals for the D.C. Circuit is often considered the second most important court in the land, after the Supreme Court. The D.C. Circuit has sole responsibility for deciding cases having to do with the **balance of powers of the branches of government** and decisions made by government agencies affecting issues like **health care, national security, environmental rules, and consumer protections and workplace safety**. More U.S. Supreme Court justices have come from the D.C. Circuit than any other circuit court, including four current Justices.

Today, **four of the court's eleven seats remain vacant**, including one seat that has been unfilled since 2005. These vacancies have a crippling effect on the court's ability to decide on critically key cases that impact the lives of Americans across the country, regardless of where they we live.

In recent years, the D.C. Circuit's composition (majority of judges are Republican-appointed) means that the court has a history of siding with corporate and industry interests over individual consumers, and has presented a host of obstacles for progressives, including blocking Wall Street reforms, reversing labor dispute decisions, and rolling back environmental protections.

**Regardless of where you live or the issues you care about, the D.C. Circuit makes decisions on issues that matter to you.**

Consider some of the issues the D.C. Circuit has decided in recent years:

## Environmental Protection

- In 2012, the court struck down the Environmental Protection Agency's "Transport Rule" intended to control air pollution that crosses state lines.

## Labor Disputes and Consumer Protections

- In 2013, the court invalidated the President's three recess appointments to the National Labor Relations Board and an appointment to the Consumer Financial Protection Bureau, essentially making the NLRB non-functional and potentially nullifying over 200 labor and employment decisions.

## Wall Street Reform

- In 2011, the court struck down the Securities and Exchange Commission's proxy access rule, which would have made it easier for shareholders to propose their own nominees to the corporate board of directors.

## Health Protections and Deceptive Advertising

- In 2012, the court struck down an FDA cigarette warning label law, citing the first amendment rights of cigarette companies.

## National Security

- Since 2008, the circuit court has blatantly disregarded a U.S. Supreme Court ruling on the right to habeas corpus rights for Guantanamo Bay detainees and ignored the requirement that the circuit conduct a robust review of prisoners' detention.

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## D.C. Circuit Vacancies Quick Facts (March 2013)

**By law, the D.C. Circuit Court of Appeals is the court with jurisdiction over certain critical issues affecting all Americans, such as:**

- Consumer protections and labor rights
- Environmental and health regulations
- National security issues
- Crucially in an era of hyperpartisanship, the balance of powers between branches of government

**By law, the D.C. Circuit currently has 11 seats. Today, four of those judgeships are vacant. Of the seven active judges:**

- Three were appointed by President George W. Bush
- Three were appointed by President Bill Clinton
- One was appointed by President George H.W. Bush
- None of President Obama's nominees have been confirmed
- All but one of the senior judges, who still hear cases, are Republican appointees

**The D.C. Circuit – with 4 of 11 seats vacant, has never been this understaffed in its history.**

- The D.C. Circuit currently has a 36% vacancy rate; the closest it has come to this rate in the last 60 years was in 2001-2003, when four of the twelve seats (33%) were vacant

**Until February 2013, for more than 40 years, the D.C. Circuit has had at least eight active judges.**

- Since the 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> seats were created in 1948, the D.C. Circuit has had fewer than eight judges on only three occasions:
  - For a brief period in 1949, just after three new seats were created
  - From January – May 1969, when there were nine authorized seats and two vacancies
  - Since February 12, 2013, when Chief Judge Sentelle took senior status

**The caseload for each active judge has increased almost 15% since 2011.**

- There are 188 pending cases for each active judge on the D.C. Circuit court today
- This compares to 164 in 2011, when the Senate last considered Obama's nominee Caitlin Halligan
- There were 155 pending cases in 2006, when President Bush nominated Peter Keisler to the D.C. Circuit

**Under the majority of Republican-appointed judges on the D.C. Circuit, the court has leaned to the conservative right, and become hostile to consumer and environmental protections.**

- Recent D.C. Circuit decisions have weakened environmental protections, overturned carefully considered cigarette warning label requirements, rolled back the Dodd-Frank Wall Street reforms, and invalidated appointments to consumer protection and labor relations agencies
- The D.C. Circuit has become far more likely than its sister circuits to second-guess a federal agency's decision. Other circuit courts reverse agency decisions roughly 15% of the time, while the D.C. circuit's reversal rate is 50% higher.
- Filling the vacancies on the court could go a long way to restoring the ability of the federal government to respond to health and safety concerns that impact every American.

**The President has nominated two people – Caitlin Halligan and Sri Srinivasan – to fill vacancies on the D.C. Circuit.**

- Progressives and conservatives agree that these nominees are highly-qualified, non-ideological lawyers with strong credentials and professional experience. Both have yet to be confirmed because of Republican obstruction.
- Halligan was nominated in 2010; renominated in 2011, 2012 and again in 2013. Her nomination was filibustered in the Senate on March 6th.
- Srinivasan was nominated in 2012 and renominated in 2013. His nomination is pending in the Senate Judiciary Committee.