

# Why Courts Matter.

## THE D.C. CIRCUIT

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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, **three 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 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:

- ✓ **THE ENVIRONMENT:** 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 for Guantanamo Bay detainees and ignored the requirement that the circuit conduct a robust review of prisoners' detainment.

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## D.C. CIRCUIT QUICK FACTS

**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, three of those judgeships are vacant. Of the eight 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
- ✓ One of President Obama's nominees was confirmed on May 23, 2013
- ✓ All but one of the senior judges, who still hear cases, are Republican appointees

**The caseload for each active judge has increased almost 38 percent since 2005.**

- ✓ There are currently 1419 pending cases split among eight active judges, which is more than 177 cases per judge.
- ✓ There were 1313 pending cases split among 11 judges in 2005, which is more than 119 cases per judge.

**The caseload per judge is greater than other Circuit Courts and the cases heard are much more complex.**

- ✓ The D.C. Circuit hears an unusually large number of major regulatory and national security cases, many of which require very specialized legal research, involve intensely long records, and take more time for a judge to process than four or five normal cases heard in other circuits.
- ✓ The caseloads outside of the D.C. Circuit include many routine sentencing, immigration and other cases of the kinds that are often dispatched with in brief orders drafted by staff attorneys (who then have these orders approved by judges).
- ✓ Both the 8th and 10th U.S. Circuit Court of Appeals have fewer cases per judge than the D.C. Circuit and the Senate recently confirmed judges to both of these courts.

**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 percent of the time, while the D.C. circuit's reversal rate is 50 percent 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 three people – Patricia Ann Millett, "Nina" Pillard, and Judge Robert L. Wilkins – to fill the remaining vacancies on the D.C. Circuit.**

- ✓ These nominees are highly-qualified, non-ideological lawyers with strong credentials and professional experience.
- ✓ They will bring diversity and a wealth of experience to the D.C. Circuit Court.
- ✓ All have received the nonpartisan ABA's highest rating.