



Written by [Bob Adelman](#) on April 10, 2017

Senators Rushing to White House With Names to Fill Judgeship Vacancies

In anticipation of Judge Neil Gorsuch's confirmation by the Senate, Colorado Senator Cory Gardner began putting together [a list of prospective nominees](#) for President Trump to consider to take his seat on the 10th Circuit Court of Appeals: "We're very close to sending over our list for the district," said Gardner on Sunday.



Senator Ted Cruz (R-Texas) sees Trump's opportunity to reshape the country's legal system, calling on the president to enlist an "army of young, principled constitutionalists" to fill the openings: "a generation of 30-something and 40-something Scalias and Thomases. We need judges who are faithful to the Constitution, who will apply the law as it is written rather than legislating from the bench, and who demonstrate judicial humility so that they will not try to impose their own policy preferences on the decisions of the democratically-elected branches of the government."

More than a dozen senators have offered their home-state favorites for the president's consideration. If Trump's nomination of Amul Thapar, age 48, to the U.S. Court of Appeals for the Sixth Circuit is any indication, Cruz is likely to get his wish. In March President Trump nominated Thapar, currently a judge of the U.S. District Court for the Eastern District of Kentucky, in the first of what many expect to be a long list of appointments being made by the president over the next several months.

One of Thapar's notable cases concerned three peaceniks protesting nuclear weapons who were convicted of various federal crimes at a nuclear weapons facility in July 2012. Thapar sentenced one of them, an 82-year-old nun, to 35 months in federal prison for breaking into the facility and defacing a bunker holding bomb-grade uranium with blood. Thapar said none of them showed any remorse over their actions and he wanted the punishment to be severe enough to deter other activists from similar behavior.

During his first term, President Trump will likely have the opportunity to appoint more federal court judges than any first-term president in 40 years. Out of the 890 authorized judgeships, 126 of them are currently vacant due either to death or retirement. 38 of them are "judicial emergencies": where a backlog of cases exceeds 600, or the vacancy has lasted longer than 18 months. But according to a "survival model" reported by the *New York Times* (based not only on age but the specific court, the



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party of the appointing president and when the judge becomes eligible for “senior” status), the number could even be larger. In fact, if all of the federal judges who become eligible to take “senior” status, a form of semi-retirement, do, in fact, take it over the next four years, President Trump could appoint as much as half the federal bench.

The impact on federal jurisprudence could be enormous. While the Supreme Court gets most of the attention, deciding on about 75 cases a year, lower courts receive thousands of cases. Only 15 percent of them ever move past a district court to a circuit court. And only a tiny percentage of them ever make their way from there to the Supreme Court. In other words, issues such as abortion and gun rights, immigration and racial discrimination cases are usually ruled at lower levels, making Trump’s appointments enormously important for the next several decades.

President Obama saw his opportunity to turn the federal courts to the Left, and he took it. For example, he appointed far more female and minority judges than any other president in history. For example, when Obama took office there was only one openly gay or lesbian judge on the federal bench. Now there are 12. When he took office, there was only one of the 13 regional circuit courts with a majority of Democrat-nominated judges. Today there are 9.

With more opportunities to fill a vast (and likely increasing) number of federal court vacancies than any president in recent memory, President Donald Trump has a remarkable opportunity to create a legacy of judicial statesmanship and constitutional rulings that could extend for generations.

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