

Trump secures 50th appellate court appointment, with another 9th Circuit judge confirmed

The Republican-controlled Senate on Wednesday afternoon confirmed Lawrence VanDyke to the 9th Circuit Court of Appeals, marking President Trump's 50th successful appellate court appointment in just three years in office, and his second to the historically liberal 9th Circuit in as many days.

By contrast, President Barack Obama nominated a total of 55 circuit judges who were confirmed over eight years — and Obama's nominees were, on average, approximately ten years older. The White House has dramatically transformed the 9th Circuit, a powerful court with jurisdiction over nine states and Guam that has long been a thorn in the president's side.

Of the 30 active seats on the 9th Circuit, 10 have now been appointed by Trump, and 14 by Republican presidents. Only nine of the court's 19 semi-retired "senior status" judges were appointed by Democrats, with 10 by Republicans. That's a major change from early last year when only six of the active judges on the 9th Circuit were chosen by Republicans.

"FIFTY CIRCUIT COURT JUDGES!" tweeted Carrie Severino, the conservative Judicial Crisis Network's chief counsel, and policy director. "Despite unrelenting Democratic obstruction and smear campaigns," she wrote, Trump and his Senate allies "have answered the call of the American people."

VanDyke's confirmation, by a 51-44 vote, came just 24 hours after Patrick Bumatay, an openly gay Filipino man, was also seated on the San Francisco-based 9th Circuit. Both nominees were fiercely opposed by Democrats, including the senators from their home states — Nevada Sens. Jacky Rosen and Catherine Cortez Masto for VanDyke, and California Sens. Dianne Feinstein and Kamala Harris for Bumatay.



The 9th Circuit Court of Appeals in San Francisco has long drawn the ire of President Trump, who has called it “disgraceful.” It’s now being transformed. (AP)

But, the White House has long ignored the so-called “blue slip” process of seeking advice from home-state senators in the judicial confirmation process, as it pressed ahead with its goal of transforming the federal appellate bench for generations.

“As the 9th Circuit shifts to become more conservative and better parallels the Supreme Court’s ideological baseline, I could only imagine fewer liberal 9th Circuit decisions and fewer overturned 9th Circuit decisions generally,” legal scholar and judicial data guru Adam Feldman, who blogs at Empirical SCOTUS, told Fox News.

The confirmations have not been easy for the White House — or its nominees. VanDyke, a deputy assistant attorney general in the environmental and natural resources division, broke down in tears during a Senate Judiciary Committee hearing in October, as he disputed suggestions that he would not be fair to members of the LGBTQ community.

WATCH: VANDYKE BECOMES EMOTIONAL DURING SENATE QUESTIONING

The ostensibly nonpartisan American Bar Association (ABA), which rated VanDyke unqualified, sent a letter to committee leadership alleging that people they

interviewed expressed this concern, and that VanDyke himself “would not say affirmatively that he would be fair to any litigant before him, notably members of the LGBTQ community.”

“There was a theme that the nominee lacks humility, has an ‘entitlement’ temperament, does not have an open mind, and does not always have a commitment to being candid and truthful,” the letter added.

The ABA did note that VanDyke, a Harvard Law School graduate and former solicitor general for Montana and Nevada, is “clearly smart.” VanDyke is a former Nevada solicitor general who also waged an expensive campaign for a seat on the Montana Supreme Court in 2014.

“I did not say that,” VanDyke told Sen. Josh Hawley, R-Mo., tears welling up in his eyes. “No, I did not say that. I do not believe that. It is a fundamental belief of mine that all people are created in the image of God. They should all be treated with dignity and respect, senator.”

VanDyke also said that he was not given a fair opportunity to respond to the allegations during his ABA interview. He said when he was confronted with the concerns about his views, he began to answer but was told they were running out of time and described himself as “much more hurt than I’ve ever been to get that” assessment from the ABA.

That interview was conducted by Marcia Davenport, the lead evaluator. Hawley noted that Davenport once contributed to the campaign of a judicial candidate who was running against VanDyke.

“I find that absolutely unbelievable,” Hawley said, stating it “probably explains the total ad hominem nature of this disgraceful letter.”

OPINION: VANDYKE THE VICTIM OF LIBERAL SMEAR CAMPAIGN — WHERE HAVE WE SEEN THIS BEFORE?

Conservative groups came to VanDyke’s defense: “Even for the ABA, this is beyond the pale,” the Judicial Crisis Network’s Carrie Severino said in a statement, accusing the ABA of “bias against conservative nominees to the judiciary.”

Bumatay, the nominee confirmed to the 9th Circuit on Tuesday, served as an

assistant U.S. attorney for the Southern District of California. He was confirmed in a 53-40 party-line vote and received a “Qualified” rating from the ABA.

“Patrick Bumatay lacks the knowledge and experience necessary for the 9th Circuit,” Feinstein said. “He also acknowledged working on the separation of immigrant families while at the Justice Department and refused to answer questions about other controversial issues.”

The conservative Americans for Prosperity (AFP), however, praised Bumatay’s credentials.

“In Patrick Bumatay, the president has nominated a highly qualified and experienced individual, committed to supporting and defending the Constitution – rather than seeking to legislate from the bench,” Casey Mattox, AFP’s vice president for legal and judicial strategy, said in a statement. “We applaud Chairman Graham and the members of the Senate Judiciary Committee for their support of Bumatay and Senator McConnell for his continued commitment to confirming fair and qualified nominees to the federal bench.”

TRUMP HOLDS WHITE HOUSE PARTY TO CELEBRATE JUDICIAL NOMINATIONS – MCCONNELL SAYS TANKING GARLAND’S NOMINATION WAS BEST CALL EVER

Speaking to top Republican lawmakers and Justice Department officials in the East Room of the White House in November, Trump celebrated the appointment of his 150th federal judge, which he called a “profoundly historic milestone and a truly momentous achievement.” As of Dec. 11, Trump has appointed a total of 120 judges to federal district courts, which sit below appellate courts – with dozens more in the pipeline.

The event featured a series of humorous moments as Trump’s onetime rivals took the microphone. Sen. Lindsey Graham, for example, fondly recalled the time Trump had given out his personal phone number on the campaign trail and compared him to a “dog” – and how the two quickly settled their score shortly after Trump took office.

“The defining moment of your president was the Kavanaugh hearing,” Graham said. “This room would be empty if we had failed Brett Kavanaugh. Brett

Kavanaugh lived a life we should all be proud of. He worked hard. And the way he was treated was the worst experience I've had in politics. A lot of people would have pulled the plug on him. Mr. President, thank you for not pulling the plug."

BIDEN WARNS OF TRUMP 'DEATH GRIP' ON FEDERAL COURTS

Trump singled out Senate Majority Leader Mitch McConnell, R-Ky., for a standing ovation, saying his impact in methodically confirming judges in the Senate was "truly amazing." Trump went on to joke that it was "so easy" to get Supreme Court justices confirmed, in a nod to the contentious Brett Kavanaugh hearings last year.

"Generations from now, Americans will know that Mitch McConnell helped save the constitutional rule of law in America — it's true," Trump said.

Fox News' Ronn Blitzer contributed to this report.

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