



THE DC CIRCUIT'S CASELOAD: COUNTERING THE GOP'S HYPOCRISY AND DISTORTIONS

Hypocrisy: Caseload Changes Over Time

Republicans claim the DC Circuit's caseload is too light to justify having more than 8 of its 11 seats filled. But it actually had a smaller caseload when Republicans worked to fill the 9th, 10th, and 11th seats with George W. Bush's nominees.

Now (Obama):	1,479 pending cases	GOP says 8 judges are enough
June 2005 (Bush):	1,313 pending cases	Brown & Griffith confirmed to 10 th & 11 th seats
May 2003 (Bush):	1,001 pending cases	Roberts confirmed to 9 th seat
July 2003 (Bush):	941 pending cases	Cloture effort for Estrada for 10 th seat Brown & Kavanaugh nom'd for 10 th & 11 th seats

Sen. Grassley and his fellow Republicans prefer to define the caseload by case filings over a year, but even under that system, Republicans pushed to fill the 9th, 10th, and 11th seats at a time when the DC Circuit's caseload was lighter than it is today:

Now (Obama):	1,137 filings	GOP says 8 judges are enough
May 2003 (Bush):	1,077 filings	Roberts confirmed to 9 th seat
July 2003 (Bush):	1,063 filings	Cloture effort for Estrada for 10 th seat Brown & Kavanaugh nom'd for 10 th & 11 th seats

Sen. Grassley tried a similar trick the last time a Democrat was in the White House. He held a subcommittee hearing in October of 1995 and pushed the idea that the DC Circuit should only have as few as 9 seats. Yet *even under Grassley's own definition*, it had a much higher caseload than at any point during the Bush years.

1995 (Clinton):	1,625 filings	Grassley suggested 9 judges may be enough
June 2005 (Bush):	1,359 filings	Brown & Griffith confirmed to 10 th & 11 th seats

Distortions: Invalid Comparisons to the Other Circuits

Sen. Grassley and his GOP colleagues have called the DC Circuit "the least-busy, least-worked appellate court in the nation." To support this accusation, they directly compare the DC Circuit's raw caseload numbers with those of other circuits. But there is no shortage of experts who have pointed out that, because of the DC Circuit's unique caseload of complex administrative cases, comparisons to other circuits are invalid.

The point was made most recently in September by the chair of the Judicial Conference's Standing Committee on Judicial Resources, which analyzes courts' caseloads and makes recommendations concerning how many judgeships are needed to get the work done. Tenth Circuit Judge Timothy

Tymkovich – a conservative who was nominated to the bench by George W. Bush – discussed this at a Senate committee [hearing](#) last month. He specifically explained why the D.C. Circuit's caseload is different from other circuits, so much so that the raw-number caseload statistics used for other circuits are not relevant to ascertaining the D.C. Circuit's caseload:

The D.C. [Circuit] Court of Appeals has been excluded from the pure numerical standard. We employ a different process with that court, because of the uniqueness of their caseload. They have a heavy administrative practice. They have something like 120 administrative appeals per judgeship panel, versus about 28 for the other Courts of Appeals. So historically, those types of cases have driven a more complex and difficult evaluation. Those cases have multiple parties, typically issues of first impression, big records, things that make them somewhat outliers [compared] to some of the cases we see in the other circuits. Some of those cases are exclusive jurisdiction in the D.C. court. So for that reason, we've excluded them from the same processes as the other circuits.

Chief Justice Roberts, who once served on the DC Circuit, even wrote a law journal [article](#) discussing the uniqueness of that court's caseload and citing its comparatively heavy caseload of appeals from administrative agencies.

So simplistic comparisons of case filings to other circuits are meaningless.

Based on Grassley's expert analysis and in-depth understanding of caseload statistics, his bill would also add seats to the 2nd and 11th Circuits. However, the Judicial Conference has requested new judgeships for other circuits, not those. In fact, just a few weeks ago, Sen. Jeff Sessions – one of Grassley's Republican colleagues on the Senate Judiciary Committee and a co-sponsor of his bill – even specifically cited the 2nd Circuit as one that did not seem to need new judgeships, based on the data presented by the Judicial Conference, and he approvingly noted that the 11th Circuit has not requested and does not need any new judgeships.

More Hypocrisy on the Other Circuits

Republicans have this year unanimously confirmed nominees to other circuits whose caseloads before confirmation were lower than the DC Circuit's.

8 th Cir.	153 pending cases per active judge	GOP voted to confirm Jane Kelly in April
10 th Cir.	150 pending cases per active judge	GOP voted to confirm Greg Phillips in July
DC Cir.	185 pending cases per active judge	GOP says 8 judges can handle this caseload

Conclusion

The GOP's focus on the DC Circuit caseload isn't about efficiency – it's about blocking a Democratic president from being able to fill seats on the nation's second highest court.

The DC Circuit has 11 judgeships by law. Republicans cannot change that law by legitimate means set forth in the Constitution. So they are using obstruction to change a law that they can't change through democratic means.

Source: Administrative Office of the U.S. Courts