

Republican Perspective
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by Ed Manning

OBAMA'S THIRD TERM

“The American Republic will endure until the day Congress discovers that it can bribe the public with the public's money.” Alexis de Tocqueville, French political scientist, historian, politician

The resistance was on full display during Supreme Court nominee Brett Kavanaugh's hearing. Senators Kamala Harris and Corey Booker were like the dueling banjos from the movie Deliverance. Democrat Senate Judicial Committee members used procedural rules to stall the hearing. 70 arrests of paid protesters added to the Democrat charade. The best dressed award went to those misguided Handmaid Maidens.

One of the most telling comments was made by Nebraska's Republican Senator, Ben Sasse.

“In the U.S. system, the legislative branch is supposed to be the center of politics. Why isn't it? For the past century, more legislative authority has been delegated to the executive branch every year. Both parties do it. The legislature is weak, and most people here in Congress want their jobs more than they want to do legislative work. So they punt most of the work to the next branch.

The consequence of this transfer of power is that people yearn for a place where politics can actually be done. When we don't do a lot of big political debating here in Congress, we transfer it to the Supreme Court. And that's why the court is increasingly a substitute political battleground. We badly need to restore the proper duties and the balance of power to our constitutional system.”

It is not just the Supreme Court but lower courts that have filled the void of the legislative branch. Here are some examples:

- Executive amnesty: Obama's unilateral violation of immigration law was one of the most blatant acts of executive overreach. When Trump countermanded, a number of district judges ruled he must continue issuing work permits and visas to people who, under the law, must be deported. The Supreme Court declined the government's expedited appeal. It now goes before the U.S. Court of Appeals for the Ninth Circuit.
- Refugee levels: The law (8 U.S.C. §1157(a)(2)) grants the president full authority to set the circumstances and numbers of refugees. Yet several district judges ruled

that Trump must continue the refugee levels set by Obama. So presidents can set refugee levels, except Trump.

- Asylum seekers: California Federal District Judge, Dana Sabraw said that Trump must continue Obama's catch and release program of questionable asylum seekers. These individuals are released into our communities and, if history is a guide, will likely ignore appearing for their court hearing dates.
- Temporary immigration status: Congress passed "temporary protected status" intended only for a small number of people who aren't eligible to remain under the standards of asylum. It was designed to be temporary, for 6 to 18 months, and under "extraordinary" conditions. For example, people affected by a natural disaster in their home country. Regardless, Federal District Judge Denise Casper ruled that a group of mostly illegal immigrants have a right to sue Trump for not making temporary protected status permanent. The judge's rationale is that "statements of animus by people plausibly alleged to be involved in the decision-making process," are enough to prevent Trump from enforcing the law.
- Entrepreneurial visas: Under Obama, the U.S. Citizen & Immigration Services issued "paroles" to aliens on the basis of their claimed entrepreneurial skills and expertise. In the immigration world, parole means letting an alien enter the United States who is otherwise ineligible to do so. Trump viewed that only Congress can create such a program and discontinued the practice. Judge James E. Boasberg, a federal judge in the D.C. District, ruled that such "paroles" must continue.
- Obama's Fuel Standards: The 2nd Federal Circuit Court of Appeals determined that the Trump administration cannot delay an Obama fuel regulation. Under Obama, automakers' will face fines for cars that violate fuel efficiency standards. The Department of Transportation had indefinitely delayed these increased penalties. Obama's penalties remain intact.

These are a few of the court's decisions since the advent of the Trump presidency. Senator Ben Sasse's words ring true. Congress needs to reassert its Constitutional legislative authority. If not, political interest groups will continue to shop district or circuit courts for arbitrary decisions. These judges will determine both domestic and foreign policy. Is this what the Founders intended?