



Last week, [Ann wondered why the Obama Administration has withdrawn proposed rules on greenhouse gas emissions from stationary sources](#), worrying that time might run out of the possibility of getting them written in time for the end of Obama's second term. The two reasons proffered — 1) susceptibility to legal attack; and 2) waiting until the Senate confirms EPA-nominee Gina McCarthy — seemed extremely weak, even for a hyper-risk-averse administration such as this one.

Well, [now we may have our answer](#):

President Obama will soon accelerate his efforts to put a lasting imprint on the country's judiciary by simultaneously nominating three judges to [the U.S. Court of Appeals for the District of Columbia Circuit], a move that is certain to unleash fierce Republican opposition and could rekindle a broader partisan struggle over Senate rules.

It's no secret that the right-wing radicals currently dominant in the DC Circuit pose a threat to any greenhouse gas regulations. And Republicans want to keep it that way. Until last week, President Obama had been the first Chief Executive not to have a judge confirmed to the DC Circuit since the court was created. To some extent, this was Obama's own fault, having only nominated two judges when the Court had four vacancies, but the Senate GOP's unprecedented obstruction may have made it moot in any event.

Now, we see the strategy coming into play. Senate Republicans' continuing obstruction and routine filibusters of every nominee, including high-level Cabinet posts, means that Senate

Democrats are seriously considering changing the upper house's rules mid-session — which itself would be unprecedented (in response to unprecedented abuse). Obama will now nominate three people to fill the DC Circuit's vacancies. Either the GOP will confirm at least some of them, or the Dems will change the rules and force them through.

On this perspective, the Administration is pulling the greenhouse gas rules to leave the specifics of climate change regulation out of the equation. It suspects, with reason, that leaving the DC Circuit in the hands of radical reactionaries like David Sentelle, Stephen Williams, Janice Rogers Brown, Raymond Randolph, and Karen Henderson means that the DC Circuit will strike down the rules, so there is little point to move forward in any event. (And it also suspects with reason that leaving climate change rules subject to the butchery will of Anthony Kennedy is little better).

The New York Times story gets one thing quite wrong, however, stating that by nominating three people at once, the President “will effectively be daring Republicans to find specific ground to filibuster all the nominees.” This is quite naive. First, Republicans under Mitch McConnell have never needed a reason to filibuster anybody or anything. They do it because they can. Second, Republicans already *have* a reason for filibustering all three nominees: a few weeks ago, [Senator Charles Grassley \(R-IA\) introduced a bill to strip the DC Circuit of three judgeships and reallocate them elsewhere](#), arguing (without credible evidence) that the Circuit is underworked and doesn't need these judges. (This did not stop Grassley from voting to fill these judgeships under the Bush II Administration). The inability to feel shame is a great asset in politics, and on this matter, Senate Republicans are very, very strong indeed.

In any event, the whole thing will turn on whether 51 Senate Democrats will go ahead with getting rid of the current filibuster for nominations. It is a risky proposition for them: once they are in the minority — and that is at least a 50/50 proposition after the 2014 midterms — then they will no longer have the ability to filibuster nominations in the event of a President Cruz. For executive branch appointments, that is all well and good (and [really the only the constitutional option](#)); for judgeships, that is a real risk because of life tenure. But at some point, something is going to have to be done with a confirmation process that Movement Conservatism has [successfully decided to break into pieces](#).