

TO: Members of the Press
FROM: Sadie Weiner, Communications Director
RE: GOP Plan to Stack the Courts
DATE: April 11, 2017

Members of the Press – The Republican effort to reduce the number of judges on the Court of Appeals should be called out for exactly what it is – their latest power-grab, aimed at exerting partisan influence over the judicial branch and laying the groundwork for future court-packing.

This legislation, HB 239, was crafted without input from the Court of Appeals and will lead to increased workload for judges and longer wait-times for cases before the court. In terms of policy, this is a bad bill. But Republicans are pushing this for political reasons, not policy reasons.

There are currently 15 judges serving on the Court of Appeals, with a breakdown of 11 Republicans and 4 Democrats. Over the next three years, three Republican judges will face mandatory retirement when they turn 72:

- May 2017 – Judge J Douglas McCullough (R)
- March 2019 – Judge Robert Hunter, Jr (R)
- October 2019 – Judge Ann Marie Calabria (R) (*if re-elected in 2018*)

Under current law, those vacancies would be filled by appointments from Governor Cooper. Under HB 239, these vacancies would not be filled, thereby preserving a wide Republican majority of 8-4. HB 239 is a blatantly political attempt to cut the number of judges on the Court of Appeals to prevent Cooper from appointing judges who may be Democrats. Former Republican Supreme Court Justice Bob Orr has said this legislation is “obviously done for political motivation.” Catharine Arrowood, Head of the NC Bar Association, said of the Appeals court cut: “This is wrong”

Politics aside, the loss of three judges will increase workload for the Court of Appeals and NC Supreme Court. Legislative Republicans have claimed that this Court reduction is due to a decrease in workload, but as has been reported, this claim is not borne out by facts. NC Supreme Court Chief Justice Mark Martin, a Republican, convened 65 experts for a two-year-long study for improving the court system, and it recommended that the legislature use “empirical workload data” when making decisions on court size.

Republicans’ Next Move

GOP judicial power grabbing is not likely to stop at the Court of Appeals. Republican Rep. Sarah Stevens recently insinuated HB 239 is the first step in a plan to increase the workload on the Supreme Court in order to justify adding Republican seats to the state’s top court:

“The Supreme Court doesn’t have enough work to do, so by cutting back on some of the Court of Appeals work, we’re going to continue to send more cases directly to the Supreme Court,” Stevens said. “You may see us back here adding more to the Supreme Court load next year or the year after for that very reason. We are trying to equalize the loads between the two.”

After Justice Mike Morgan’s 2016 election to the state Supreme Court changed the balance to favor Democratically-affiliated justices by 4-3, speculation was widely reported in December that legislative Republicans would attempt to pack the Supreme Court. Former Governor Pat McCrory confirmed in December that the legislature had intended to pack the Supreme Court.

Republicans Don't Like Losing in Court

Of course, the GOP's effort to control the courts isn't just for the sake of control. The judicial branch has needed to weigh in on numerous unconstitutional laws passed by Republican supermajorities in recent years. Having lost many of these cases, Republican legislators are now continuing their effort to make the courts more overtly partisan and more Republican.

A long-term Republican plan to fiddle with the courts to satisfy their partisan leanings undermines the basic checks and balances of state government and is not in the best interest of North Carolinians. It distracts from the urgent priorities at hand. Governor Cooper respects our state's separation of powers and will continue to fight overreach by the legislature.

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