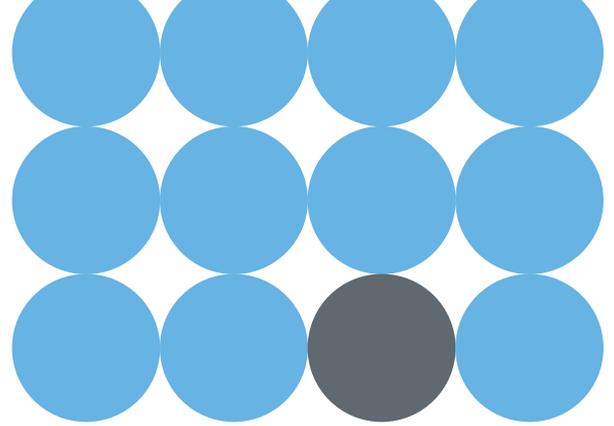


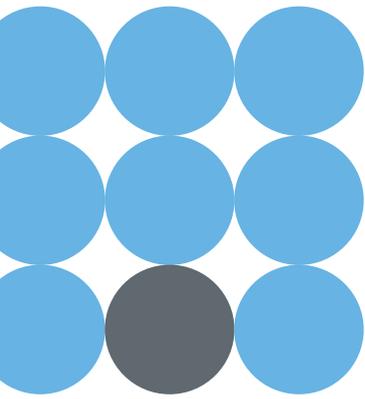
Social Justice Brief



President Obama Nominates Three to the DC Circuit Court: Why Should Social Workers Care?

The primary mission of the social work profession is to enhance human well-being and help meet the basic human needs of all people, with particular attention to the needs and empowerment of people who are vulnerable, oppressed, and living in poverty.





Melvin H. Wilson, MBA, LCSW
Manager, Department of Social
Justice & Human Rights

President Obama Nominates Three to the DC Circuit Court: Why Should Social Workers Care?

It has been widely reported that President Obama has taken the extraordinary step of nominating three individuals to fill the remaining vacancies of the U.S. Court of Appeals for the District of Columbia Circuit (also known as the D.C. Circuit Court) This step is extraordinary because: (1) There is a critical need to fill all the vacancies on this important court and (2) submitting multiple nominations is a White House strategy to protect against filibustering against the President's judicial nominees.

President Obama's Nominees

The three nominees include highly qualified candidates who are diverse in terms of gender and ethnicity. The nominees are:

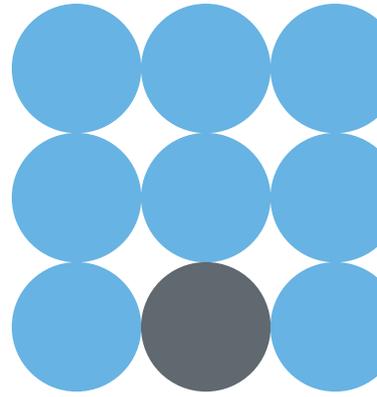
Patricia Ann Millett, a white woman who is an a prominent appeals lawyer in Washington, D.C., **Cornelia Pillard**, a white woman who is currently a highly regarded law professor at Georgetown University, and **Robert Leon Wilkins**, an African American man who was appointed to the United States District Court for the District of Columbia in 2009. Judge Wilkins successfully argued a milestone racial profiling case (*Wilkins v. Maryland*) in 1994 (http://judgepedia.org/index.php/Robert_Leon_Wilkins).

While the concern for the composition and completeness of filling judicial vacancies is newsworthy, why should this issue particularly interest social workers? The answer is directly linked to the National Association of Social Workers' commitment to social justice and human rights through its stated core ethics and values.

The Critical Role of the D.C. Circuit Court in National Policy

The *D.C. Circuit* is one of twelve regional Appellate Courts throughout the United States (www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/FederalCourtsStructure.aspx#). There are eleven active seats on this court, three of which are currently vacant. The D.C. Circuit Court is widely regarded as a critically important court in the United States, next to the U.S. Supreme Court. The following statement from Senator Patrick Leahy (D-VT) is indicative of how this particular court is viewed:

"...the unique character of the D.C. Circuit's caseload means that it is misleading to compare its caseload to that of the other Circuits. The D.C. Circuit Court of Appeals is often considered "the second most important court in the land" because of its special jurisdiction and because of the important and complex cases that it decides. The Court reviews complicated decisions and rulemaking of many Federal agencies, and in recent years has handled some of the most important terrorism and enemy combatant and detention cases since the attacks of September 11....



“All cases are not the same and many of the hardest, most complex and most time-consuming cases in the Nation end up at the D.C. Circuit.” (Sen. Patrick Leahy, D-VT, www.leahy.senate.gov/press/senate-votes-to-confirm-dc-circuit-court-nominee)

The Affordable Care Act (ACA) provides a good example of the critical role the D.C. Circuit Court played in the Supreme Court’s eventually upholding the constitutionality of ACA. As reported in the *New York Times* in 2011:

“A federal appeals court in Washington upheld the Obama administration’s health care law on Tuesday in a decision written by a prominent conservative jurist. The decision came as the Supreme Court is about to consider whether to take up challenges to the Affordable Care Act, a milestone legislative initiative of the administration. Of four appellate court rulings on the health care law so far, this is the third to deal with the law on the merits, and the second that upholds it. The United States Court of Appeals for the District of Columbia Circuit in Washington issued the 37-page opinion by Judge Laurence H. Silberman. In the opinion, Judge Silberman, who was appointed by President Ronald Reagan, described the law as part of the fundamental tension between individual liberty and legislative power.” (*New York Times*). (www.nytimes.com/2011/11/09/health/policy/appeals-court-upholds-health-care-law.html?_r=0). On June 9, 2012, the Supreme Court also ruled that ACA was constitutional.

Consequences of a Lack of Ideological Balance of Current D.C. Circuit Court

In addition to this major health care related decision, the D.C. Circuit Court has significant responsibility for deciding cases regarding the balance of powers of the branches of government and actions by federal agencies that affect our health and safety. For organizations and advocacy

groups that are deeply concerned about protections and access to services for the many vulnerable individuals in our society, there is a push for rulings from the D.C. Circuit Court that are more favorable to needs of their constituents. Therefore, the ideological make-up of the court is of concern.

There is a general consensus that the D.C. Circuit Court has become more conservative due to the fact that even though the eight active judges on the D.C. Circuit Court are split between four Republican-appointed judges and four Democratic-appointed judges, all five of senior judges (who are semi-retired) are Republican appointees (American Constitution Society www.acslaw.org/acsblog/senators%E2%80%99-sorry-story-on-obstructing-dc-circuit-court-nominations). All senior judges can and often do sit on the DC Circuit’s Court’s three judge panels to rule on a wide range of cases.

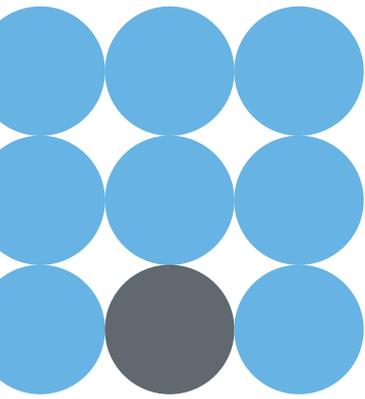
As a result, some of recent decisions of the D.C. Circuit Court have:

- » Sided with corporate and industry interests over individual workers and consumers;
- » Blocked Wall Street reforms;
- » Undermined labor rights, and
- » Rolled back environmental protections.

Recent D.C. Circuit Court Rulings Conflict with *Social Work Speaks*

Social Work Speaks, 2012-2014 (NASW, 2012) presents *Issue Statements* on several key legal opinions made by D.C. Circuit Court’s conservative majority. Most of the court’s rulings were contrary to the positions taken in *Social Work Speaks*. A comparison of *Social Work Speaks* positions of and the Court’s decisions follows:

- » **Environmental Protections:** In 2012, the D.C. Circuit Court struck down an Environmental Protection Agency rule intended to control air pollution that crosses state lines. According to the EPA, in 2014 alone this rule would have prevented 13,000 to 14,000 *premature*



deaths, 15,000 non-fatal heart attacks, and 1.8 million missed days of school and work.

Social Work Speaks' Issue Statement on Environmental Justice is fundamentally in opposition to the court's position. Adverse health conditions due to air pollution disproportionately impact low-income and minority populations (News America Media (<http://newamericamedia.org/2012/11/minorities-poor-breathe-worse-air-pollution-study-finds.php>). To that end, *Social Work Speaks* states that "Fair treatment [in environmental justice] means that no population, because of policy or economic disempowerment, is forced to bear a disproportionate burden of the negative human health or environmental effects of pollution or other environmental consequences resulted from industrial, municipal, or commercial operations...." (NASW, 2012. p.125).

» **Worker Rights and Consumer Protections:**

In 2013, the Court invalidated the President's three recess appointments to the National Labor Relations Board, under reasoning that would also invalidate an appointment to the Consumer Financial Protection Bureau. This decision was contrary to other courts' rulings and 150 years of recess appointments—including 141 such appointments during the presidencies of Barack Obama and George W. Bush alone. The Court also ruled in 2013 that an NLRB rule requiring employers to inform workers of their legal rights violates the employers' First Amendment rights.

- » **Wall Street Reform:** In 2011, the Court placed an unreasonably high standard on the Securities and Exchange Commission and struck down a key Wall Street Reform regulation that would have made it easier for shareholders to propose their own nominees to corporate boards of directors. *Social Works Speaks* addresses these issues in the context of Economic Justice. From an Economic Justice standpoint, the position taken by the D.C. Circuit Court's Wall Street Reform ruling would be an

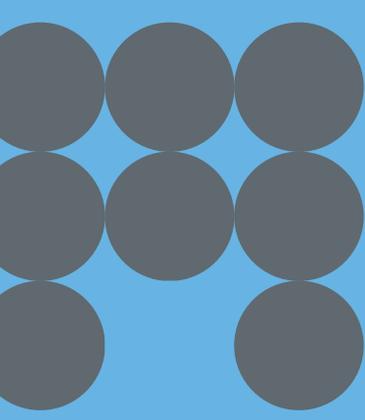
anathema to social workers. *Social Work Speaks* refers to "America's new economy" (NASW. 2012. p. 257) as being one where there are vast economic disparities between the richest one percent of Americans and the rest of the population.

- » **Health Protections:** In 2012, the Court struck down an FDA cigarette warning label regulation, citing the First Amendment rights of cigarette companies.

On the issue of health protections, *Social Work Speaks* takes a broad comprehensive position on access to health care, health disparities and health policies. The FDA cigarette warning case that was struck down by the D.C. Circuit Court is a preventive health issue. Social work advocates for all efforts to prevent life altering health conditions that often disproportionately impact low-income and minorities more severely than the general population.

The juxtaposition of the recent rulings of the D.C. Circuit Court on key socio-economic issues with the stated positions in *Social Work Speaks* is stark. The philosophy and sensitivity of judges about major issues that impact millions of people matters. It is often the case that the functions, impact and responsibilities of the federal judiciary (including the Supreme Court) is something that feels distant to most Americans. However, social workers have a long history of placing social justice and human rights at the forefront of their professional ethos and values. The power of the D.C. Circuit Court and other of the federal courts in the judiciary is such that its rulings can either impede the advancement of social justice or become the defenders of rights of the country's vulnerable and un-empowered populations.

The White House's nominations of **Patricia Ann Millett**, **Cornelia Pillard**, and **Robert Leon Wilkins** would seem to be a major step forward for bringing philosophical balance to the D.C. Circuit Court of Appeals.



NASW Resources

NASW » SocialWorkers.org

NASW Foundation » NASWFoundation.org

NASW Press » NASWPress.org

NASW Assurance Services, Inc. » NASWAssurance.org

NASW Center for Workforce Studies » Workforce.SocialWorkers.org

Help Starts Here » HelpStartsHere.org

Social Work Reinvestment Initiative » SocialWorkReinvestment.org

Social Work Policy Institute » SocialWorkPolicy.org

Social Work Portal » SocialWorkers.org/swportal



©2013 National Association of Social Workers. All Rights Reserved.