THE PHYLLIS SCHLAFLY REPORT

Fourth Circuit 'Lawyers Up' Against Trump

by John and Andy Schlafly

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"Lawyer up" refers to hiring a bunch of lawyers to address an emerging dispute. An example was when President Bill Clinton "lawyered up" to deal with the Monica Lewinsky scandal.

The entire U.S. Court of Appeals for the Fourth Circuit has just "lawyered up" in order to take on Donald Trump's second travel ban, Executive Order 13,780, which is on appeal from a federal district court in Maryland. The Fourth Circuit has convened an en banc (full sitting) of its lawyers-turned-judges to consider this standoff between the courts and the President of the United States, in *International Refugee Assistance Project v. Trump*.

It is nearly unheard of for a court to convene *en banc* to consider an initial federal appeal. More than 99% of federal appeals are heard by a three-judge panel chosen at random from among the judges who sit on that particular federal appellate court.

But there are several reasons why the Fourth Circuit broke from tradition and insists on all its active judges hearing this case from the get-go. The current composition of this appellate court reveals why.

From its headquarters in Richmond, the Fourth Circuit presides over Maryland, Virginia, West Virginia and North and South Carolina. Historically the Fourth was the most conservative Circuit in the entire Nation, featuring judges handpicked by Senators Jesse Helms (R-NC) and Strom Thurmond (R-SC).

But today the Fourth is one of the most liberal of the 13 federal circuit courts, stacked with 10 Democrats against only 5 Republicans on active service, and no vacancies. President Obama placed 6 judges on the Fourth Circuit, all in his first term alone.

By insisting on going *en banc* at the outset, this Democrat-dominated court ensures that Trump will not draw a Republican majority on a three-judge panel, which would have been possible under the ordinary process. Instead, Trump will be looking at

a group of judges more liberal on social issues than the voters in California, where Trump lost by 62-32%.

Another likely reason why the Fourth Circuit took this extraordinary step was to muscle up for its stand-off with the commander in chief. It will be easier to rule against the Chief Executive with the support of ten judges than merely with only two or three.

That's more judges than the entire U.S. Supreme Court, which will almost certainly get the appeal one day. The Fourth Circuit, however, can take as long as it likes with this case, and could easily wait until just before the midterm elections next year before slapping Trump down with another judicial supremacist ruling.

The federal district court ruled that Trump's executive order limiting travel from six Muslim-majority countries was probably a violation of the Establishment Clause, and the court enjoined it on that basis. The lower court said that statements made by candidate Trump reflected an animus towards Muslims, and thus as President he would not be allowed to protect our Nation from possible terrorists with this travel ban.

The district court issued its injunction nationwide, even though it sits only in Maryland. The court insisted that no one would be hurt by the injunction, although people have been hurt and killed by individuals entering our Nation from the designated foreign countries.

At issue is a mere 90-day ban on travel by citizens of Iran, Libya, Somalia, Sudan, Syria, and Yemen, to the United States. One may wonder why foreigners even have a right to challenge an order of the President of the United States concerning entry into our country.

Included among the plaintiffs were American citizens and lawful permanent residents who sponsored relatives living in one of the six designated countries for immigrant visas to the United States. These plaintiffs assert that they will be injured if their relatives cannot visit them here.

But why don't these plaintiffs travel abroad to visit with their relatives there instead? Or, perhaps better yet, why don't they seek a waiver as allowed by Trump's Second Executive Order?

The court found that the waiver process imposes an additional hurdle to "reunification" of these families, and thus the court allowed the relatives here to sue on

behalf of their kin there. In addition, the court found that Muslim lawful residents here could sue to overturn the travel ban based on "fear, anxiety, and insecurity" due to Trump's allegedly anti-Muslim views.

As Phyllis Schlafly observed a decade ago in *The Supremacists*, "Textbooks still say that we have three balanced branches of government — but textbooks are badly behind the times because one branch has assumed authority over the other two." This overreaching in power by the judicial branch will not be rectified by appointing a few good judges to the bench.

Instead, Trump's advisers need to realize that the courts will block Trump and drive down his approval rating again and again. Congress should simply withdraw jurisdiction from the courts over the travel ban, and Trump's executive branch should decline to enforce unconstitutional court orders that interfere with our national security.

John and Andy Schlafly are sons of Phyllis Schlafly (1924-2016) whose 27th book, The Conservative Case for Trump*, was published posthumously on September 6*.