



California Supreme Court Justice Kathryn Werdegar, appointed by Republican Gov. Pete Wilson, retired Aug. 31, 2017. Her replacement has yet to be named by Gov. Jerry Brown. (AP Photo/Paul Sakuma, pool) Paul Sakuma - AP

#### CALIFORNIA FORUM

# Can we please have a new California Supreme Court justice, Governor Brown?

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It's been more than a year since California Supreme Court Associate Justice Kathryn Mickle Werdegar announced her intent to retire from the California Supreme Court. And more than seven months have passed since she retired on August 31, 2017.

Since then the already overworked and

underfunded court has struggled to make ends meet with only six members. It has been forced to draft pinch hitters from the Court of Appeal, drawing those justices away from their own heavy dockets. Governor Brown, can we please have a new California Supreme Court justice?

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**THE COURTS AND THE STATE SUFFER FROM AN UNDERSTAFFED BENCH ON CALIFORNIA'S HIGH COURT. VACANCIES AND DELAY IN FILLING THEM SLOW THE JUDICIAL PROCESS, REDUCE THE COURT'S PRODUCTIVITY, AND IMPEDE THE PUBLIC'S ACCESS TO JUSTICE.**

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Only a California governor can fill seats on the state's highest bench. Of all the state's governors, none has made more high court appointments than Jerry Brown: seven in his first stint as governor, and three so far in his second act.

Combining both tours (and including the expected Justice Werdegar replacement) Jerry Brown holds the record for most California Supreme Court appointments: eleven. Including his father, Gov. Pat Brown, collectively the Brown family has made 19 appointments to the court; that's 41 percent of all justices since 1934, and 16 percent of all justices since California became a state. And filling Justice Werdegar's seat will create a majority of four Brown appointees on the current court.

Such a powerful effect on the judicial branch (one-third of the state government) after serving a combined 16 years as the head of another branch is a major legacy achievement. So why the delay filling this seat?

Sadly, it's par for the course. Brown's judicial appointment rate is substantially lower than his predecessor's. Gov. Arnold Schwarzenegger appointed 627 judges in about seven years, an average of about 90 per year. In an equivalent seven-year period, Governor Brown has appointed 451 judges, or just short of 65 per year. At this pace Brown is unlikely to match Schwarzenegger's total. Compared with the previous administration, filling the bench looks like a low priority for this governor.

For example, the number of empty trial court seats increased when the second Brown administration began in January 2011. And the longest-ever high court seat vacancy periods both occurred while Jerry Brown was governor. The longest was the nine months between Justices Joyce Kennard and Mariano-Florentino Cuéllar, and the current vacancy is the next longest at seven months. Those vacancies coincide with lower California Supreme Court output: The 27-year average opinion output is 99.75 cases per year, while the annual average since 2011 fell to 88.

The courts and the state suffer from an understaffed bench on California's high court. Vacancies and delay in filling them slow the judicial process, reduce the court's productivity, and impede the public's access to justice. We saw this with the record-setting delay in filling Justice Kennard's seat, which coincided with a one-third drop in the court's productivity that year.

Until Justice Werdegar is replaced, the court must employ pro tem justices from the Court of Appeal – and an empty seat reduces the court's opinion output even with pro tems, because they typically do not author majority opinions. Without a tiebreaker, the court generally will not schedule argument on cases split 3–3, so closely divided cases are stalled. And the court is handicapped by the missing voice in the conversation, lacking a full complement when deciding weighty matters.

California needs its high court operating at full capacity. Governor Brown, please exercise your appointment power.

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