

Testimony to the Presidential Commission on the Supreme Court

Panel on the Supreme Court Confirmation Process

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Co-Chairs Bauer and Rodriguez, thank you for this opportunity to testify about the role the confirmation process plays in debates over whether and how to reform the Supreme Court. My testimony is largely based on my recent book, *Supreme Disorder: Judicial Nominations and the Politics of America's Highest Court*, a copy of which I'd be happy to provide to any commissioner who so desires. Especially relevant to this panel is chapter 19, titled "What Have We Learned?"

The last few years have shown that the Supreme Court is now covered by the same toxic cloud that has enveloped all of the nation's public discourse. Although the Court is still respected more than most institutions, it's increasingly viewed through a political lens. What most concerns people is how judicial politics affect the Court's "legitimacy"—perhaps a subject for another time—but what lessons can we draw from the history of confirmation battles?

Politics Has Always Been Part of the Process

Politics has always been part of the process of selecting judicial nominees, and even more part of the process of confirming them. From the beginning of the republic, presidents have picked justices for reasons that include balancing regional interests, supporting policy priorities, and providing representation to key constituencies. Whether looking to candidates' partisan labels or "real" politics, they've tried to find people in line with their own political thinking, and that of their party and supporters. Even in the old days, it was rare for someone to be on the Supreme Court "short list" of presidents of multiple parties. Look at the judicial battles of John Adams and Thomas Jefferson, with the Midnight Judges Act—the original court-packing—as well as Jefferson's failed attempts to appoint justices to counter the great Federalist John Marshall. In the years that followed, when U.S. politics were defined by rivalries *within* the Democratic-Republican Party and its successors, ambitious lawyers knew that their careers depended on navigating the intra-party split. There's never been a golden age when "merit" as an objective measure of legal acumen was the sole consideration for judicial selection.

When those nominees got to the Senate, they faced another gauntlet, particularly when the president's party didn't have a majority. Historically, the Senate has confirmed fewer than 60 percent of Supreme Court nominees under divided government, as compared to just under 90 percent when the president's party controlled the Senate.¹ Timing matters too: over 80 percent of

¹ Lee Epstein and Jeffrey A. Segal, *Advice and Consent: The Politics of Judicial Appointments*, New York: Oxford University Press, 2005, at 107. The authors were writing before the Supreme Court nominations of Presidents George W. Bush (all under united government), Obama (Sotomayor and Kagan under united, Garland under divided), and Trump (united), but the statistic holds.

nominees in the first three years of a presidential term have been confirmed, but barely more than half in the fourth (election) year.

Nearly half the presidents have had at least one unsuccessful nomination, starting with George Washington and running all the way through George W. Bush and Barack Obama. James Madison had a nominee rejected, while John Quincy Adams had one “postponed indefinitely”—you have to love that euphemism. Andrew Jackson was able to appoint Roger Taney only after a change in Senate composition, while poor John Tyler, a political orphan after the Whigs kicked him out of their party, had only one successful nomination in nine attempts. Most 19th-century presidents had trouble filling seats, before we had a run from 1894 until 1968 where only one nominee was rejected, John Parker under Herbert Hoover in 1930. Since LBJ, all presidents who have gotten more than one nomination had one fail, except George H.W. Bush, Bill Clinton, and Donald Trump—who nonetheless had three of the most contentious nominations in our history.

In all, of 164 nominations formally sent to the Senate (counting each submission, even if the same person), only 127 were confirmed, a success rate of 77 percent. Of those 127, one died before taking office and seven declined to serve, the last one in 1882—an occurrence unlikely ever to happen again. Of the rest, 12 were rejected, 12 were withdrawn, ten expired without the Senate’s taking any action, and three were postponed or tabled. In other words, for various reasons, fewer than three-quarters of high court nominees have ended up serving.

Based on relative rates of unsuccessful nominations, the argument could be made that the nomination and confirmation process was more political during the nation’s first century than since. Both the presidency and the Court were relatively weak and the process was more of an insider’s game, with many picks based on personal loyalty and political philosophy rather than approach to the law. Of the 57 justices confirmed between 1789 and 1898, 17 lacked significant judicial experience.² As the judiciary took on a greater role, however, nominations attracted more public attention, and also more transparency. Interest groups began to matter—unions and the NAACP contributed to Parker’s 1930 rejection—as public relations became just as important as Senate relations. Politics came back into the process, but in a different way. The battle became one over ideology and public perception rather than satisfying intra-party or regional factions.

Confirmation Fights Are Now Driven by Judicial Philosophy

As we’ve seen over the long sweep of American history, confirmation controversies are hardly unprecedented. To a certain extent, the politicization of Supreme Court appointments has tracked political divisions nationally. But the *reasons* for such controversies in the last few decades *are* largely unprecedented. While inter- and intra-party politics have always played a role, couching opposition in terms of judicial philosophy is a relatively new phenomenon that represents a departure from the past.

Pre-modern controversies tended to revolve around either the president’s relationship with the Senate or deviations from shared understandings of the factors that go into nominations for particular seats—especially geography and patronage. That dynamic is markedly different from the ideological considerations we see now for at least two reasons. First, modern fights transcend any particular nominee or even president, evolving and growing and filtering into the lower courts. Second, ideological litmus tests cause more of a problem than the geographic,

² See Timothy S. Heubner, “The Supreme Court Confirmation Process Is Actually Less Political Than It Once Was,” *Washington Post*, December 12, 2018, <https://www.washingtonpost.com/outlook/2018/12/12/supreme-court-confirmation-process-is-actually-less-political-than-it-once-was>.

patronage, religious, and other past criteria because there's no longer widespread acceptance that a president gets to have his choice as long he meets those other, more neutral criteria. With the two major parties adopting essentially incompatible judicial philosophies, it's impossible for a president to find an "uncontroversial" nominee.

The conservative legal movement, meanwhile, has learned its lesson; "no more Souters" means there has to be a proven record, not simply center-right views and affiliations, showing not telling a commitment to originalism and textualism. Once you consider someone who doesn't have a long judicial record, or at least academic writings to the same originalist-textualist effect, it opens the door to the sort of presidential discretion that has backfired in the past.

The entire reason candidate Trump released his list was to convince Republicans, as well as cultural conservatives who may otherwise have stayed home or voted Democrat, that he could be trusted to appoint the right kind of judges. This was a real innovation, and we could see lists become standard practice, even if candidates from the two parties might use different criteria for shaping those lists, with more concern for demographic representation among the Democrats, who have a broader swath of lawyers—if not necessarily federal judges—to choose from.

The current emphasis on judicial philosophy may well be an updating of the "real politics" approach favored by presidents in the early 1900s—except now applied to intellectual commitments instead of trying to find (or avoid) progressive Republicans or conservative Democrats. But the problem is that there aren't really too many progressive originalists or conservative living-constitutionalists, at least not in any way where the ideological appellation doesn't swallow the philosophical one. Even Merrick Garland, who's about as much of a moderate as President Obama could find, didn't budge the Republican Senate.

Modern Confirmations Are Different Because the Political Culture Is Different

The inflection point for our legal culture, as for our social and political culture, was 1968, which ended that 70-year near-perfect run of nominations. Until that point, most justices were confirmed by voice vote, without having to take a roll call. Since then, there hasn't been a single voice vote, not even for the five justices confirmed unanimously or the four whose no votes were in the single digits. And despite those "easy" confirmations, we've seen an upswing in no votes; five of the closest eight confirmation margins have come in the last 30 years. Not surprisingly, the increased opposition and scrutiny has also signaled an increase in the time it takes to confirm a justice; six of the eight longest confirmations—and all but one that took longer than 80 days—have come since 1986. Every confirmation since the mid-1970s except Sandra Day O'Connor, Ruth Bader Ginsburg, and the expedited pre-election process for Amy Coney Barret has taken more than two months.

There are many factors going into the contentiousness of the last half-century: the Warren Court's activism and then *Roe v. Wade*, spawning a conservative reaction; the growth of presidential power to the point where the Senate felt the need to reassert itself; the culture of scandal since Watergate; a desire for transparency when technology allows not just a 24-hour media cycle but a constant *and instant* delivery of information and opinion; and, fundamentally, more divided government.³ As the Senate has grown less deferential, and presidential picks have become more ideological, seeking to achieve a certain legal agenda or empower a certain kind of jurisprudence rather than merely appointing a good party man, the clashes have grown.

³ See David Greenberg, "The New Politics of Supreme Court Appointments," *Daedalus* (Summer 2005), 5.

And as these philosophical battle lines have hardened, so have the media campaigns orchestrated by supporters and opponents of any given nominee. There's a straight line from the national TV ads against Robert Bork to the tens of millions of dollars spent on the fight over Brett Kavanaugh, including sophisticated targeting of digital media to voters in states whose senators are the deciding votes. "It's a war," explained Leonard Leo, who now chairs the public affairs firm CRC Advisors, "and you have to have troops, tanks, air, and ground support."⁴

To put a finer point on it, all but one failed nomination since Abe Fortas in 1968 have come when the opposite party controlled the Senate. The one exception is Harriet Miers, who withdrew because she was the first nominee since Harrold Carswell in 1969 to be seen as not up to the task. The last nominee rejected by a Senate whose majority was the same party as the president was Parker, by two votes in 1930. For that matter, this turbulent modern period has seen few outright rejections—Nixon's two and Bork are the only ones, in 53 years—with pre-nomination vetting and Senate consultation obviating most problematic picks.

At the same time, the inability to object to qualifications has led to manufactured outrage and scandal-mongering. This was more evident before considerations of judicial philosophy became standard practice, when Bork was an outlier. "Many people sneer at the notion of litmus tests for purposes of judicial selection or confirmation—even as they unknowingly conduct such tests themselves," Harvard law professor Randall Kennedy wrote 20 years ago. The real problem, as he saw it, was that not being able to discuss ideology led to a search for scandal. "A transparent process in which ideological objections to judicial candidates are candidly voiced," he concluded, "is a much-needed antidote to the murky 'politics of personal destruction.'"⁵ Sounding the same refrain at the same time was one Chuck Schumer: "The taboo [on invoking ideology] has led senators who oppose a nominee for ideological reasons to justify their opposition by finding non-ideological factors, like small financial improprieties from long ago. This 'gotcha' politics has warped the confirmation process and harmed the Senate's reputation."⁶

Well, that taboo no longer exists—which is a good, honest thing, because vetting a nominee's judicial philosophy is important—and yet we still got the Kavanaugh hearings.

Hearings Have Become Kabuki Theater

Public confirmation hearings have only been around for a century, starting with Louis Brandeis's nomination in 1916. But Brandeis didn't testify at his own hearing; the first hearing where the nominee took unrestricted questions in an open hearing was Felix Frankfurter in 1938. It simply wasn't regular practice until the 1950s. At that point, the hearings became a chance for Southern Democrats to rail against *Brown v. Board of Education*. Few senators other than the segregationists even asked the nominees questions. Otherwise, hearings became perfunctory discussions of personal biography, as with Charles Whittaker in 1957 or the man who succeeded him in 1962, Byron White. John Paul Stevens, the first nominee after *Roe v. Wade*, wasn't even asked about that case—which was already controversial, have no doubt. The focus in that post-Fortas, post-Watergate time was on ethics, and he was confirmed 19 days after nomination.

Things changed in the 1980s, not coincidentally when the hearings began to be televised. Now all senators ask questions, especially about key controversies and fundamental issues, but nominees largely refuse to answer, creating what Elena Kagan 25 years ago called a "vapid and

⁴ Phone interview with Ilya Shapiro, March 19, 2020.

⁵ Randall Kennedy, "The Case for Borking," *The American Prospect*, July 2–16, 2001, 26.

⁶ Charles E. Schumer, "Judging by Ideology," *New York Times*, June 26, 2001, A19.

hollow charade.”⁷ But even with this conventional narrative, there has been a subtle shift; from Bork in 1987 through Stephen Breyer in 1994, nominees went into some detail about doctrine.⁸ “This is not to say that nominees during those years made commitments about how they would rule on contested legal issues. But they did discuss their judicial philosophies, their past writings and their beliefs about the role of judges.”⁹ Clarence Thomas discussed natural law and the role that the Declaration of Independence plays in constitutional interpretation. Ruth Bader Ginsburg talked about gender equality and the relationship between liberty and privacy.

Beginning with John Roberts in 2005, however, the nominees still covered the holdings of cases and what lawyers call “black letter law”—what you need to know to get a good grade in law school—but there’s been little revelation of personal opinions. The nominees speak in platitudes: Roberts and his judicial umpire, Sotomayor saying that fidelity to the law was her only guidepost, Kagan accepting that “we’re all originalists now.” President Trump’s nominees, starting with Neil Gorsuch and filtering down to lower-court nominees, have even been hesitant to take a view on whether iconic cases like *Brown* were correctly decided, lest their inability to similarly approve of another longstanding precedent (notably *Roe*) cast doubt on its validity.

These days, senators try to get nominees to admit that certain controversial cases are “settled law,” whether *Roe* when coming from a Democrat or *District of Columbia v. Heller* from a Republican. Of course, when you’re dealing with the Supreme Court, law is settled until it isn’t, so nominees have come to say that every ruling is “due all the respect of a precedent of the Supreme Court,” or some such. That may or may not be a lot of respect, depending on the future justice’s view of the merits and of the weight of *stare decisis*—the idea that some erroneous precedent should be allowed to stand to preserve stability in the law and protect reliance interests. And that’s before we even get to the “gotcha” questions, or last-minute accusations of sexual impropriety.

Every Nomination Can Have a Significant Impact

The actual hearings, and the confirmation process more broadly, have very little to do with being a judge or justice. Once that spectacle is over, the new justice takes his or her seat among new colleagues—a lifetime “team of nine,” as Justice Kavanaugh called it at his confirmation hearing—to begin reading briefs and considering technical legal issues. It must be a surreal experience, having run an American Ninja Warrior course to win a life of quiet contemplation and oracular pronouncements. Or, as President Trump’s first White House Counsel Don McGahn put it, “it’s a Hollywood audition to join a monastery.”¹⁰

Regardless, once you’re in, you’re in. As Justice White told Justice Thomas when the latter first joined the Court, “It doesn’t matter how you got here. All that matters now is what you do here.”¹¹ After all the nomination hoopla, the Supreme Court is still a court, albeit with a new composition that affects both internal dynamics and external results. White was also fond of

⁷ Elena Kagan, “Confirmation Messes, Old and New,” review of Stephen L. Carter, *The Confirmation Mess: Cleaning Up the Federal Appointments Process* (NY: Basic Books, 1994), 62 U. Chi. L. Rev. 919, 941 (1995).

⁸ See Paul M. Collins, Jr., and Lori A. Ringhand, Chapter 4: “An Issue-by-Issue Look at the Hearings,” *Supreme Court Confirmation Hearings and Constitutional Change* (New York: Cambridge University Press, 2013), 100-39.

⁹ Carolyn Shapiro, “Putting Supreme Court Confirmation Hearings in Context,” SCOTUSblog, August 28, 2018, <https://www.scotusblog.com/2018/08/putting-supreme-court-confirmation-hearings-in-context>.

¹⁰ Donald F. McGahn, remarks at conference on “The Politics of Judicial Nominations in an Age of Mistrust,” Princeton University, March 6, 2020.

¹¹ Clarence Thomas, *My Grandfather’s Son*, New York: Harper, 2007, at 286.

saying that every justice creates a new Court, so each change shakes up the previous balance—regardless how close in “expected” philosophy a new justice might be to his or her predecessor.

That’s why every vacancy is important. Not all historically significant cases would’ve turned out differently if one justice were replaced—*Marbury v. Madison* and other Marshall Court cases were typically unanimous, *Dred Scott* was 7-2, *Plessy v. Ferguson* was 8-1, *Korematsu v. United States* was 6-3, *Wickard v. Filburn* was unanimous, as was *Brown*, while *Roe* was 7-2—but some would have. And not simply by changing the party of the president making the appointment. The *Slaughterhouse Cases*, which eviscerated the Fourteenth Amendment’s protections against state action, were a 5-4 ruling with Lincoln appointees split 2-3, Grant appointees split 2-1, and a Buchanan appointee breaking the tie. *Lochner v. New York* was another 5-4, with Republican appointees split 3-3 and Democratic appointees split 2-1. The early New Deal cases typically split 6-3 or 5-4 against expansions of federal power, aligning the Four Horsemen (three Republican appointees and James Clark McReynolds) against the Three Musketeers (two Republican appointees and Brandeis), with two other Republican appointees in the middle, culminating in 1937’s “switch in time that saved nine.”

And all that’s before we get to the modern era, when we got used to first Justices Potter Stewart and Lewis Powell, then Sandra Day O’Connor and Anthony Kennedy, as the swing votes on issues ranging from affirmative action and redistricting to religion in the public square and gay rights. So many cases would’ve been decided differently had the conservative Bork been confirmed instead of the moderate Kennedy, and differently still had the libertarian Douglas Ginsburg occupied that seat. For that matter, had Edith Jones been nominated in 1990 instead of David Souter, Kennedy wouldn’t have been the median vote from 2005 to 2018; John Roberts would’ve been. And if Michael Luttig had been picked instead of Roberts in 2005—whether as chief justice or with Antonin Scalia elevated and Samuel Alito in Scalia’s place—it would’ve been a *very* different Court these last 16 years.

Moreover, Court majorities are fragile and subject to affinities and clashes. Chief Justice Marshall drew people toward him who normally wouldn’t agree with him. Justice McReynolds pushed everyone away. Justice William Brennan was gregarious and a skilled tactician, often outmaneuvering Chief Justice Warren Burger. Justice O’Connor may have shaded left in response to Justice Scalia’s provocations, or to balance the arrival of the more conservative Justice Thomas.

In part because they’ve been burned so many times, Republicans focus on the Court as an election issue much more than Democrats. *Bush v. Gore*, *Citizens United*, and *Shelby County*, the three biggest progressive losses of the last 25 years, have riled activists and elites, and ratcheted up confirmation battles, but haven’t translated into campaigns regarding judges as such. “Republicans seem conditioned to feel that when they’re not paying attention, the courts will cause them all kinds of trouble,” Co-Chair Bauer once explained to me. “Democrats have come to have a similar concern, but for a long time, with visions of Warren, Brennan, Stevens and the like, they were more optimistic—maybe to a fault.”¹²

Democrats may now be catching up, even though *during* the Garland experience, they didn’t make much of the vacancy or the Republicans’ blockade. The result of the 2016 presidential election is that, for the first time in the modern era, and perhaps more clearly than ever, different judicial methodologies and approaches to legal interpretations line up with partisan preferences. For the foreseeable future, every Supreme Court vacancy is an opportunity to either prolong one party’s control of a particular seat or “flip” it.

¹² Interview with Ilya Shapiro, March 2, 2020.

Another reason why filling each vacancy is such a big deal is that justices now serve longer. In the late 1700s, when life expectancy was under 40—skewed by infant mortality, of course—the average age of a Supreme Court nominee was about 50. In the late 1900s/early 2000s, when life expectancy in the United States is just under 80—more than that for those who are already in late middle age—the average age of a Supreme Court nominee is still not much above 50. And that includes the outlier Merrick Garland, who at 63 wouldn't have been picked had it not been for the unusual situation in which President Obama tried to offer a compromise. Since 1972, only one of 16 justices (Ginsburg) was over 55 at confirmation.

To put it another way, before 1970, the average tenure of a Supreme Court justice was less than 15 years. Since then, it's been more than 25. The life expectancy of justices once confirmed has grown from about eight years at the beginning of the Republic to 25-30 today. Justices appointed at or before age 50, like Roberts, Kagan, Gorsuch, and Barrett, are likely to serve 35 years, or about nine presidential terms, projecting the legal-policy impact of Presidents Bush, Obama, and Trump, respectively, as far into the future as Justices Scalia and Kennedy did for President Reagan. Justice Thomas, who was 43 when he joined the Court and has already served nearly 30 years, could serve another decade!

The Hardest Confirmations Come When There's a Potential for a Big Shift

In addition to divided government, at a time when the Court's ideological profile is more clearly defined, the most contentious nominations are those that threaten a shift in the Court's jurisprudence. Replacing the centrist Powell with the conservative Bork provoked a firestorm, but putting another moderate in that seat was easy. Replacing liberal lion Thurgood Marshall with counterculture conservative Clarence Thomas was a fight, but appointing Scalia to William Rehnquist's seat when Rehnquist was elevated was a cakewalk. Would Kavanaugh have faced such strong opposition had he been nominated for Thomas's seat? Probably not.

There are only two obvious shifts in a more liberal direction. The first was Ginsburg's replacement of White, but that smooth confirmation came at a time when the Democrats had a significant Senate majority (57-43), newly elected Bill Clinton was enjoying his honeymoon—remember when presidents had those?—and White himself had been appointed by a Democratic president. The second was Garland's nomination to replace Scalia.

Think of it this way: regardless of which party controlled the Senate, would there have been as big a political firestorm last fall if President Trump were replacing Justice Thomas rather than Justice Ginsburg? Will the fight to replace Justice Breyer be fiercer under President Biden or a Republican president?

Of course, presidents aren't always successful in moving the Court in their preferred direction. Thomas Jefferson tried valiantly to dislodge the powerful Federalist judicial impulse, only to see his nominees fall under John Marshall's sway. Abraham Lincoln named Treasury Secretary Salmon P. Chase as chief justice, partly to get him out of his hair, but more importantly to uphold the legislation by which the federal government had financed the Civil War, and which Chase had helped draft. Instead, Chief Justice Chase wrote the opinion finding the Legal Tender Act unconstitutional. Ulysses Grant wanted to mold the Court for the post-Civil War world, but it took him eight nominations to seat four justices of varying quality and political direction. Teddy Roosevelt should've been pleased with the great progressive Oliver Wendell Holmes, but

after a vote in the major antitrust case of the time, TR inveighed that “I could carve out of a banana a judge with more backbone than that.”¹³

Woodrow Wilson, a renowned scholar of jurisprudence and thus in theory more sensitive to these concerns than most other presidents, named another storied progressive, Brandeis, but also the most retrograde justice of that or possibly any time, McReynolds, who didn’t seem to share any of Wilson’s views other than with regard to antitrust (and bigotry). Calvin Coolidge’s sole nominee, Harlan F. Stone, would end up betraying his benefactor’s laissez-faire proclivities by joining with Justices Holmes and Brandeis in taking the Court in a judicially restrained, and therefore progressive, direction. Harry Truman called putting Tom Clark on the Supreme Court his “biggest mistake” after Justice Clark ruled against his 1952 seizure of steel mills.¹⁴ Dwight Eisenhower was disappointed with both Earl Warren and William Brennan, although the latter was more of a political calculation ahead of the 1956 election, intended to help with the Catholic (and crossover Democrat) vote. Nixon’s appointment of Harry Blackmun similarly mitigated the reversal of the Warren Court that he had hoped to achieve, particularly given that Warren Burger wasn’t a particularly strong leader and Lewis Powell became more of a moderate.

Ronald Reagan too advanced his own legal-policy agenda only with Scalia—elevating Rehnquist didn’t add any votes—as O’Connor and Kennedy occupied the Court’s middle rather than pushing originalism, “strict construction,” law-and-order conservatism, or any other articulation of what Republicans wanted. George H.W. Bush of course had Souter in addition to Thomas. His son, looking for reliable conservatives, checked that box with Roberts and Alito but didn’t realize that a focus on judicial restraint could also lead to an over-deference to Congress.

While a justice might feel “loyal to the president who appointed him,” then-Justice Rehnquist told a law school audience in 1984, “institutional pressures . . . weaken and diffuse the outside loyalties of any new appointee.”¹⁵ At the same time, he explained, “one may look at a legal question differently as a judge than one did as a member of the executive branch”—and Rehnquist would know, having been a high Justice Department official. Moreover, a nominee picked for his views on the issues of the day—government expansion under FDR, executive power over national security under George W. Bush—might act contrary to type when the issue mix changes. The judicial restraint of Felix Frankfurter, a New Deal progressive who co-founded the ACLU, made him a conservative in the postwar era, while John Roberts’s similar restraint leads him to defer both to a wartime president and a peacetime Congress.

The Court Rules on So Many Controversies That Political Battles Are Unavoidable

Under the Framers’ Constitution, by which the country lived for its first 150 years, the Supreme Court hardly ever had to curtail a federal law. If you read the Congressional Record of the 18th and 19th centuries, Congress debated whether particular legislation was constitutional much more than whether something was a good idea. Debates focused on whether something was genuinely for the general welfare or whether it only served a parochial or regional interest. “Do we have the power to do this?” was the central issue. In 1887, Grover Cleveland vetoed an appropriation of \$10,000 for seeds to Texas farmers who were suffering from a terrible drought

¹³ George F. Will, “Liberals Put the Squeeze to Justice Roberts,” *Washington Post*, May 25, 2012, https://www.washingtonpost.com/opinions/liberals-put-the-squeeze-to-justice-roberts/2012/05/25/gJQANa4hqU_story.html.

¹⁴ Merle Miller, *Plain Speaking* (New York: Berkeley Medallion Edition, 1973), 242-43.

¹⁵ Todd S. Purdum, “Presidents, Picking Justices, Can Have Backfires,” *New York Times*, July 5, 2005, A1.

because he could find no warrant for such appropriation in the Constitution.¹⁶ Twenty years later, the Supreme Court declared, “the proposition that there are legislative powers affecting the nation as a whole although not expressed in the specific grant of powers is in direct conflict with the doctrine that this is a government of enumerated powers.”¹⁷

We also had a stable system of rights that went beyond those listed in the Bill of Rights. These rights were retained by the people under the Ninth Amendment—and similarly the Tenth Amendment was redundant of the whole structure of powers, which was based on the idea that we have a government of delegated and enumerated, and therefore limited, powers.

Judges play bigger roles today; as the Court has allowed the government to grow, so has its own power to police the federal programs its own jurisprudence enabled. For example, the idea that the General Welfare Clause justifies any legislation that gains a majority in Congress—as opposed to *limiting* federal reach to national issues—emerged in the Progressive Era. In 1935, FDR wrote to the chairman of the House Ways and Means Committee, “I hope your committee will not permit doubts as to constitutionality, however reasonable, to block the suggested legislation.”¹⁸ Decades later, Rexford Tugwell, a New Deal architect, wrote that “to the extent that these [policies] developed they were tortured interpretations of a document intended to prevent them.”¹⁹ In the 1930s and ’40s, we thus had the perverse expansion of the Commerce Clause with cases like *NLRB v. Jones & Laughlin* and *Wickard v. Filburn*, which gained renewed prominence in the constitutional debate over Obamacare. After the “switch in time that saved nine,” when the Court began approving grandiose legislation it had previously rejected, no federal legislation would be set aside as going beyond congressional power until 1995.

We also had the flipside of the expansion of powers: the warping of rights. In 1938, the infamous Footnote Four in the *Carolene Products* case bifurcated our rights such that certain rights are more equal than others in a kind of *Animal Farm* approach to the Constitution. So it’s the New Deal Court that politicized the Constitution, and thus also the confirmation process, by laying the foundation for judicial mischief of every stripe—but particularly in letting laws sail through that should be invalidated. The Warren Court picked up that baton by invalidating laws in areas that are best left to the political branches, micro-managing cultural disputes in a way that made the justices into philosopher kings, elevating and sharpening society’s ideological tensions.

In that light, modern confirmation battles—whether you look at Bork, Thomas, the filibustering of George W. Bush’s lower-court nominees, the scrutiny of Sotomayor’s “wise Latina” comment, or the party-line votes on Trump’s appointees—are all part of, and a logical response to, political incentives given judges’ novel expansive role. When judges act as super-legislators, the media and the public want to scrutinize their ideology for that very reason.

As Roger Pilon wrote presciently nearly 20 years ago, “Because constitutional principles limiting federal power to enumerated ends have been ignored, the scope of federal power and the subjects open to federal concern are determined now by politics alone. Because the rights that would limit the exercise of that power are grounded increasingly not in the Constitution’s first principles but in the subjective understandings of judges about evolving social values, they too increasingly reflect the politics of the day.”²⁰

¹⁶ 18 Cong. Rec. 1,875 (1887).

¹⁷ *Kansas v. Colorado*, 206 U.S. 46, 89 (1907).

¹⁸ Letter from Franklin D. Roosevelt to Rep. Samuel B. Hill (July 6, 1935) in 4 *The Public Papers and Addresses of Franklin D. Roosevelt* 91-92 (Samuel I. Rosenman ed., 1938).

¹⁹ Rexford G. Tugwell, “A Center Report: Rewriting the Constitution,” *Center Magazine*, March 1968, 20.

²⁰ Roger Pilon, “How Constitutional Corruption Has Led to Ideological Litmus Tests for Judicial Nominees,” Cato Institute Policy Analysis No. 446, August 6, 2002, 11.

The ever-expanding size and scope of the federal government has increased the number and complexity of issues brought under Washington’s control, while the collection of those new federal powers into the administrative state has transferred ultimate decision-making authority to the courts. The imbalance between the executive branch and Congress—especially the latter’s abdication of its leading constitutional role by delegating what would otherwise be legislative responsibilities—has made the Supreme Court into the decider both of controversial social issues and complex policy disputes. Senator Ben Sasse (R-Neb.) wrote about this dynamic in a *Wall Street Journal* op-ed adapted from his opening remarks at the Kavanaugh hearings:

For the past century, more legislative authority has been delegated to the executive branch every year. Both parties do it. The legislature is weak, and most people here in Congress want their jobs more than they want to do legislative work. So they punt most of the work to the next branch.

The consequence of this transfer of power is that people yearn for a place where politics can actually be done. When we don’t do a lot of big political debating here in Congress, we transfer it to the Supreme Court. And that’s why the court is increasingly a substitute political battleground. We badly need to restore the proper duties and the balance of power to our constitutional system.²¹

In other words, Congress doesn’t complete its work so it can pass the political buck to a faceless bureaucracy, and to a judiciary that ultimately has to evaluate if what these alphabet agencies come up with is within spitting distance of what the Constitution allows. What’s supposed to be the most democratically accountable branch has been punting its duties and avoiding hard choices since long before the current polarization.

Gridlock is a feature of a legislative process that’s meant to be hard by design, but compounded of late by citizens of all political views being fed up with a situation where nothing changes regardless of which party is elected. Washington has become a perpetual-motion machine—and the courts are the only actors able to throw in an occasional monkey wrench. “Punting difficult issues to the Court is not a new thing,” noted C. Boyden Gray, White House counsel under President Bush I, adding that Alexis de Tocqueville had recognized the dynamic in the 1830s. “What’s made it so fraught is the way the administrative state has been used the last two decades.”²² That’s why people are concerned about the views of judicial nominees—and why there are more protests outside the Supreme Court than Congress.

Possible Changes to the Confirmation Process

Setting aside potential changes to Supreme Court structure, the subject of other panels, what about reforming the confirmation process? Should we have rules for how many days after a nomination there must be a hearing and then a vote? Maybe we should consider restoring the filibuster for nominees—although Gorsuch was the first and only Supreme Court nominee subjected to partisan filibuster. (Recall that Justice Fortas lacked even a bare majority of announced support for his elevation to chief justice, while Justices Thomas and Alito were

²¹ Ben Sasse, “Blame Congress for Politicizing the Court,” *Wall Street Journal*, September 5, 2018, <https://www.wsj.com/articles/blame-congress-for-politicizing-the-court-1536189015>.

²² Interview with Ilya Shapiro, February 13, 2020.

confirmed with fewer than 60 votes.) Of course, if we had the political alignment for these kinds of changes, we wouldn't have the toxic atmosphere we're in, so it's a chicken-and-egg problem.

Henry Saad, a former Michigan court of appeals judge whose nomination to the Sixth Circuit was filibustered under George W. Bush, has proposed a number of reforms to the nomination and confirmation process, most of which are only relevant to the lower courts.²³ For example, he suggests that each of the three branches should have a committee for evaluating judicial candidates, as should each state, and federal judges themselves should conduct interviews and issue ratings (in lieu of the discredited American Bar Association). I'm not sure how realistic these pre-nomination proposals are, both in light of political realities—some states already have commissions, particularly for district judgeships, but that system breaks down when the relevant senators are opposed to the White House—and the constitutional powers of presidential appointment and senatorial advice and consent. And how many judges would really want to evaluate their future colleagues, even if their reports are supposed to say confidential?

With respect to reforms that would apply equally to Supreme Court nominees, Saad would make it a violation of judicial ethics for nominees to give their opinions about a case, while making hearings untelevised, with questions submitted in writing, restricted to professional qualifications, and asked by the chief counsel for each party's judiciary committee members. Some committees allow this in other contexts, and while it didn't seem to work very well for Republicans in the supplemental Kavanaugh hearing, that was largely a function of the five-minute increments the counsel questioning was forced into. Any personal information or ethical concerns could be handled in the confidential session that the judiciary committee already has to discuss the FBI background investigation and other sensitive matters.

These sort of post-nomination proposals are healthy, because they target the spectacle that confirmations have become, with senators either not equipped to handle the required lines of questioning or grandstanding to produce a gotcha moment, or at least B-roll for campaign videos. "It's like testifying in a restaurant," quipped former White House counsel Don McGahn, with photographers clicking away in front and protestors haranguing in the back.²⁴ And it's not like we learn anything about nominees, who are now coached to avoid saying anything newsworthy.

I've come to the conclusion that we should get rid of hearings altogether, that they've served their purpose for a century but now inflict greater cost on the Court, Senate, and rule of law than any informational or educational benefit gained. Given the voluminous and instantly searchable records nominees have these days—going back to collegiate writings and other digitized archives—is there any need to subject them, and the country, to a public inquisition? At the very least, the Senate could hold nomination hearings entirely in closed session.

Outside-the-box thinking should be commended and proposals to improve confirmation processes shouldn't be discounted lightly, especially if cosmetic or easy changes would enhance public confidence in the Court's integrity. I'm willing to consider anything that would show that there's a difference between interpreting the law and making it, between judging and legislating.

But I'm not sure any of these formalistic changes would do anything given that it's not a breakdown in the rules that caused the poisonous atmosphere surrounding nominations, but the other way around. Senators have—correctly—come to see judges as just as much or more important than legislation, so they started applying the same bareknuckle political plays to them.

²³ Henry Saad, remarks at conference on "The Politics of Judicial Nominations in an Age of Mistrust," Princeton University, March 6, 2020.

²⁴ Interview with Ilya Shapiro, March 9, 2020.

In the end, all of this “reform” discussion boils down to re-arranging the deck chairs on the Titanic. And this Titanic is not the appointment process, but the ship of state. The fundamental problem we face, and that the Supreme Court faces, is the politicization not of the *process* but of the *product*. The only way judicial confirmations will be detoxified, and the only way we reverse the trend whereby people increasingly see judges as “Trump judges” and “Obama judges,” is for the Supreme Court to restore our constitutional order by returning improperly amassed federal power to the states, while forcing Congress to legislate on the remaining truly national issues rather than letting bureaucratic rules govern us.

* * *

As one Court watcher wrote a quarter-century ago, “Today’s confirmation battles are no longer government affairs between the President and the Senate; they are public affairs open to a broad range of players. Thus, overt lobbying, public opinion polls, advertising campaigns, focus groups, and public appeals have all become a routine part of the process.”²⁵ Those trends have only accelerated in the intervening 25 years, such that Supreme Court nominations are perhaps the highest-profile set-pieces in the American political system. Not even set-pieces but months-long slogs. Once the inside game of picking the nominee ends—that traditional dance between president and Senate—the outside game begins, culminating in the literally made-for-TV hearing and then a vote that, as we learned with Justice Kavanaugh, can be just as dramatic.

It’s not good, but we’ve gotten here because Congress and the presidency have gradually taken more power for themselves, and the Supreme Court has allowed them to get away with it, aggrandizing itself in the process. As the Court has let both the legislative and executive branches swell beyond their constitutionally authorized powers, so have the laws and regulations that it now interprets. Competing theories battle for control of both the U.S. Code and Federal Register, as well as determining—often at the whim of one “swing vote”—what rights will be recognized. As we’ve gone down that warped jurisprudential track, the judiciary now affects the direction of public policy more than ever. So of course judicial confirmations are going to be fraught, particularly as competing interpretive theories essentially map onto political parties that are more ideologically coherent than ever.

That’s also why the judicial nomination and confirmation processes are more cognizant of partisan considerations. This wasn’t as much of a problem when partisanship mainly meant rewarding your cronies. But it’s a modern phenomenon for our parties to be so ideologically polarized, and therefore for judges nominated by presidents from different parties to have notably different views on constitutional interpretation.

There are two big buckets of cases where that dynamic has contributed to the ratcheting up of tensions that has both crumbled Senate norms in considering and filtered down into lower-court nominations: (1) cultural issues, ranging from abortion and LGBTQ issues to the Second Amendment and death penalty, and (2) what I’ll call “size of government” issues, which encompasses everything from environmental regulations to Obamacare, guidance documents to enforcement practices. And then there’s an overlay of “structural” cases: *Bush v. Gore*, *Citizens United*, *Shelby County*, and partisan gerrymandering—whose legal issues in the abstract shouldn’t have partisan valence, but in the real world of American politics obviously do.

As the response of the conservative legal movement to various judicial provocations has shifted, the debate over that constellation of issues has crystallized. From calls for restraint in the

²⁵ John A. Maltese, *The Selling of the Supreme Court Nominees* (Baltimore: Johns Hopkins University Press, 1995), at 143.

face of the Warren Court’s making up social policy out of whole cloth—which ultimately led to too much deference to the political branches, and thus a long term loss for constitutional governance—the focus now is on engaging the law, which often calls for invalidating the laws being reviewed instead of exercising what Alexander Bickel called the “passive virtues.” Indeed, “activism” has become a vacuous term that conveys only disagreement with the judge or opinion being criticized. The battle has been joined over the legal theory rather than judicial process.

That is, so long as we accept that judicial review is constitutional and appropriate in the first place—how a judiciary is supposed to ensure that the government secures and protects our liberties without it is beyond me—then we should only be concerned that a court “gets it right,” regardless of whether that correct interpretation leads to the challenged law being upheld or overturned. To paraphrase John Roberts at his confirmation hearings, the “little guy” should win when he’s in the right, and the big corporation should win when it’s in the right. The dividing line, then, is not between judicial activism (or passivism) and judicial restraint, but between legitimate and vigorous judicial engagement and illegitimate judicial imperialism.

It’s a generational battle: do you get into the fight over federalism and the separation of powers or do you sit back and let the political branches handle that sort of thing, preferring not to mess up your judicial robes? And that gets us back to the debate over the administrative state, regarding deference doctrines, congressional delegation of legislative powers, and even more arcane areas of regulatory law. Which is why judicial selection is so consequential. “If you get the administrative stuff right, everything else will fall into place,” McGahn emphasized to me.²⁶

In any event, the balanced Court that we were accustomed to, with one or two human jump-balls between separate ideological blocs, is done. The Court is moving right, with the chief justice as the median vote for the first time in half a century. While Chief Justice Roberts will have even more incentive to indulge his minimalist fantasies and lead the Court from the squishy commanding heights, he is a surer vote for conservatives—maybe not libertarians—than Justice Kennedy was. What that means in the long term only time will tell, though of course Roberts was the median vote for only two years, and this past term revealed a Court in flux, with grand compromises and heterodox alignments that one point had pundits calling it the “Breyer Court.”

But the judicial debates we’ve seen the last few decades were never really about the nominees themselves—just like proposals for court-packing and the like aren’t about “good government.” They’re about the Court’s direction. The left in particular needs its social and regulatory agendas, as promulgated by the executive branch, to get through the judiciary, because they would never pass as legislation at the national level. That’s why progressive forces pull out all the stops against originalist nominees who would enforce limits on federal power. Indeed, all of the big nominee blowups in modern times—since the bipartisan opposition to Abe Fortas—have come with Republican appointments. The one quasi-exception didn’t involve any attacks on the nominee, but the rare case of an election-year vacancy arising under divided government; Merrick Garland would’ve been confirmed had Antonin Scalia died a year earlier.

Not that any of this is a good thing. “I really, really don’t like where we are right now,” sighed former solicitor general Don Verrilli, who had worked on nominations under Presidents Clinton and Obama and laments the evermore tense atmosphere. “Something needs to be done to change the situation.”²⁷ If nominations were depoliticized, whether through term limits or any other reforms, or some unpredictable shock that recalibrated norms, that would likewise depoliticize the exercise of judicial power, both in perception and reality.

²⁶ Interview with Ilya Shapiro, March 9, 2020.

²⁷ Phone interview with Ilya Shapiro, March 19, 2020.

But term limits would take a constitutional amendment and everything else is either completely unworkable or doesn't actually solve the identified problem. We can't just wave a magic wand and go back to some halcyon age where the issues we faced as a country, the development of the law, and the political dynamic, were all different. "If they could truly, truly go back, I hear from most senators that they would prefer a return to the pre-nuclear-option days," observed Ron Klain, who has significant experience working on judicial nominations in the Clinton and Obama administrations, and is now chief of staff to President Biden, "but in many ways, it's easier for them now, because there's very little constituency for voting for the other party's nominees."²⁸

The only lasting solution to what ails our body politic is to return to the Founders' Constitution by rebalancing and devolving power, so Washington isn't making so many big decisions for the whole country. Depoliticizing the judiciary and toning down our confirmation process is a laudable goal, but that'll happen only when judges go back to judging rather than bending over backwards to ratify the constitutional abuses of the other branches.

The judiciary needs to once again hold politicians'—and bureaucrats'—feet to the constitutional fire by rejecting overly broad legislation of dubious constitutional warrant, thus curbing executive-agency overreach and putting the ball back in Congress's court. And by returning power to the people, while ensuring that local majorities don't invade individual constitutional rights. After all, the separation of powers and federalism exist not as a dry exercise in Madisonian political theory but as a means to that singular end of protecting our freedom.

These structural protections are the Framers' brilliant best stab at answering the eternal question of how you empower government to secure liberty while also building internal controls for self-policing. Or, as Madison famously put it in Federalist 51, his disquisition on man's non-angelic nature, "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."

Ultimately, judicial power is not a means to an end, but an enforcement mechanism for the strictures of a founding document intended just as much to curtail the excesses of democracy as to empower its exercise. In a country ruled by law, and not men, the proper response to an unpopular legal decision is to change the law or amend the Constitution. Any other method leads to a sort of judicial abdication and the loss of those very rights and liberties that can only be vindicated through the judicial process. Or to government by black-robed philosopher kings—and as Justice Scalia liked to say, why would we choose nine lawyers for that job?

The reason we have these heated court battles is that the federal government is simply making too many decisions at a national level for such a large, diverse, and pluralistic country. There's no more reason that there needs to be a one-size-fits-all health care system, for example, than that zoning laws must be uniform in every city. Let federal legislators make the hard calls about truly national issues like defense or (actually) interstate (actual) commerce, but let states and localities make most of the decisions that affect our daily lives. Let Texas be Texas and California be California. That's the only way we're going to defuse tensions in Washington, whether in the halls of Congress or in the marble palace of the highest court in the land.

²⁸ Phone interview with Ilya Shapiro, March 18, 2020.

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THE SUPREME COURT
Supreme Court Nominations (1789-2020)

Nominee	POTUS	Replacing	Nominated [§]	Result	Days	Vote	Result
				Date	Nom-Result		
Jay, John*	Washington	<i>New Seat</i>	9/24/1789	9/26/1789	2	V	C
Rutledge, John	Washington	<i>New Seat</i>	9/24/1789	9/26/1789	2	V	C
Cushing, William	Washington	<i>New Seat</i>	9/24/1789	9/26/1789	2	V	C
Harrison, Robert	Washington	<i>New Seat</i>	9/24/1789	9/26/1789	2		D
Wilson, James	Washington	<i>New Seat</i>	9/24/1789	9/26/1789	2	V	C
Blair, John	Washington	<i>New Seat</i>	9/24/1789	9/26/1789	2	V	C
Iredell, James	Washington	<i>New Seat</i>	2/8/1790	2/10/1790	2	V	C
Johnson, Thomas	Washington	Rutledge	10/31/1791	11/7/1791	7	V	C
Paterson, William	Washington	Johnson	2/27/1793	2/28/1793	1		W
Paterson, William	Washington	Johnson	3/4/1793	3/4/1793	0	V	C
Rutledge, John	Washington	Jay	12/10/1795	12/15/1795	5	10-14	R
Cushing, William	Washington	Jay	1/26/1796	1/27/1796	1		D
Chase, Samuel	Washington	Blair	1/26/1796	1/27/1796	1	V	C
Ellsworth, Oliver*	Washington	Jay [‡]	3/3/1796	3/4/1796	1	21-1	C
Washington, Bushrod	Adams (F)	Wilson	12/19/1798	12/20/1798	1	V	C
Moore, Alfred	Adams (F)	Iredell	12/4/1799	12/10/1799	6	V	C
Jay, John	Adams (F)	Ellsworth	12/18/1800	12/19/1800	1		D
Marshall, John*	Adams (F)	Ellsworth	1/20/1801	1/27/1801	7	V	C
Johnson, William	Jefferson (D-R)	Moore	3/22/1804	3/24/1804	2	V	C
Livingston, H. Brockholst	Jefferson (D-R)	Paterson	12/13/1806	12/17/1806	4	V	C
Todd, Thomas	Jefferson (D-R)	<i>New Seat</i>	2/28/1807	3/2/1807	2	V	C
Lincoln, Levi	Madison (D-R)	Cushing	1/2/1811	1/3/1811	1		D
Wolcott, Alexander	Madison (D-R)	Cushing	2/4/1811	2/13/1811	9	9-24	R
Adams, John Quincy	Madison (D-R)	Cushing	2/21/1811	2/22/1811	1		D
Story, Joseph	Madison (D-R)	Cushing	11/15/1811	11/18/1811	3	V	C
Duvall, Gabriel	Madison (D-R)	Chase	11/15/1811	11/18/1811	3	V	C
Thompson, Smith	Monroe (D-R)	Livingston	12/5/1823	12/9/1823	4	V	C
Trimble, Robert	Quincy Adams (D-R)	Todd	4/11/1826	5/9/1826	28	27-5	C
Crittenden, John	Quincy Adams (D-R)	Trimble	12/17/1828	2/12/1829	57	23-17	P
McLean, John	Jackson (D)	Trimble	3/6/1829	3/7/1829	1	V	C
Baldwin, Henry	Jackson (D)	Washington	1/4/1830	1/6/1830	2	41-2	C
Wayne, James	Jackson (D)	Johnson	1/6/1835	1/9/1835	3	V	C
Taney, Roger	Jackson (D)	Duvall	1/15/1835	3/3/1835	47	24-21	P
Taney, Roger*	Jackson (D)	Marshall	12/28/1835	3/15/1836	77	29-15	C
Barbour, Philip	Jackson (D)	Duvall	12/28/1835	3/15/1836	77	30-11	C
Smith, William	Jackson (D)	<i>New Seat</i>	3/3/1837	3/8/1837	5	23-18	D
Catron, John	Jackson (D)	<i>New Seat</i>	3/3/1837	3/8/1837	5	28-15	C
McKinley, John	Van Buren (D)	<i>New Seat</i>	9/18/1837	9/25/1837	7	V	C
Daniel, Peter	Van Buren (D)	Barbour	2/26/1841	3/2/1841	5	25-5	C
Spencer, John	Tyler (W) [†]	Thompson	1/8/1844	1/31/1844	23	21-26	R
Walworth, Reuben	Tyler (W) [†]	Thompson	3/13/1844	6/17/1844	96	27-20	W

Nominee	POTUS	Replacing	Nominated[§]	Result Date	Days Nom-Result	Vote	Result
King, Edward	Tyler (W) [†]	Baldwin	6/5/1844	6/15/1844	10	29-18	P
Spencer, John	Tyler (W) [†]	Thompson	6/17/1844	6/17/1844	0		W
Walworth, Reuben	Tyler (W) [†]	Thompson	6/17/1844	6/17/1844	0		NA
King, Edward	Tyler (W) [†]	Baldwin	12/4/1844	2/7/1845	65		W
Walworth, Reuben	Tyler (W) [†]	Thompson	12/4/1844	2/4/1845	62		W
Nelson, Samuel	Tyler (W) [†]	Thompson	2/4/1845	2/14/1845	10	V	C
Read, John	Tyler (W) [†]	Baldwin	2/7/1845				NA
Woodward, George	Polk (D)	Baldwin	12/23/1845	1/22/1846	30	20-29	R
Woodbury, Levi	Polk (D)	Story	12/23/1845	1/3/1846	11	V	C
Grier, Robert	Polk (D)	Baldwin	8/3/1846	8/4/1846	1	V	C
Curtis, Benjamin	Fillmore (W)	Woodbury	12/11/1851	12/20/1851	9	V	C
Bradford, Edward	Fillmore (W)	McKinley	8/16/1852				NA
Badger, George	Fillmore (W)	McKinley	1/3/1853	2/14/1853	42		W
Micou, William	Fillmore (W)	McKinley	2/14/1853				NA
Campbell, John	Pierce (D)	McKinley	3/21/1853	3/22/1853	1	V	C
Clifford, Nathan	Buchanan (D)	Curtis	12/9/1857	1/12/1858	34	26-23	C
Black, Jeremiah	Buchanan (D)	Daniel	2/5/1861	2/21/1861	16	25-26	R
Swayne, Noah	Lincoln (R)	McLean	1/21/1862	1/24/1862	3	38-1	C
Miller, Samuel	Lincoln (R)	Daniel	7/16/1862	7/16/1862	0	V	C
Davis, David	Lincoln (R)	Campbell	12/1/1862	12/8/1862	7	V	C
Field, Stephen	Lincoln (R)	<i>New Seat</i>	3/6/1863	3/10/1863	4	V	C
Chase, Salmon P.*	Lincoln (R)	Taney	12/6/1864	12/6/1864	0	V	C
Stanbery, Henry	A. Johnson (D) ^{††}	Catron	4/16/1866				NA
Hoar, Ebenezer	Grant (R)	<i>New Seat</i>	12/14/1869	2/3/1870	51	24-33	R
Stanton, Edwin	Grant (R)	Grier	12/20/1869	12/20/1869	0	46-11	C ^Δ
Strong, William	Grant (R)	Grier	2/7/1870	2/18/1870	11		C
Bradley, Joseph	Grant (R)	<i>New Seat</i>	2/7/1870	3/21/1870	42	46-9	C
Hunt, Ward	Grant (R)	Nelson	12/3/1872	12/11/1872	8	V	C
Williams, George*	Grant (R)	Chase	12/1/1873	1/8/1874	38		W
Cushing, Caleb*	Grant (R)	Chase	1/9/1874	1/13/1874	4		W
Waite, Morrison*	Grant (R)	Chase	1/19/1874	1/21/1874	2	63-0	C
Harlan I, John	Hayes (R)	Davis	10/16/1877	11/29/1877	44	V	C
Woods, William	Hayes (R)	Strong	12/15/1880	12/21/1880	6	39-8	C
Matthews, Stanley	Hayes (R)	Swayne	1/26/1881				NA
Matthews, Stanley	Garfield (R)	Swayne	3/14/1881	5/12/1881	59	24-23	C
Gray, Horace	Arthur (R)	Clifford	12/19/1881	12/20/1881	1	51-5	C
Conkling, Roscoe	Arthur (R)	Hunt	2/24/1882	3/2/1882	6	39-12	D
Blatchford, Samuel	Arthur (R)	Hunt	3/13/1882	3/22/1882	9	V	C
Lamar, Lucius	Cleveland (D)	Woods	12/6/1887	1/16/1888	41	32-28	C
Fuller, Melville*	Cleveland (D)	Waite	4/30/1888	7/20/1888	81	41-20	C
Brewer, David	B. Harrison (R)	Matthews	12/4/1889	12/18/1889	14	53-11	C
Brown, Henry	B. Harrison (R)	Miller	12/23/1890	12/29/1890	6	V	C
Shiras, George Jr.	B. Harrison (R)	Bradley	7/19/1892	7/26/1892	7	V	C
Jackson, Howell	B. Harrison (R)	Lamar	2/2/1893	2/18/1893	16	V	C

Nominee	POTUS	Replacing	Nominated[§]	Result Date	Days Nom-Result	Vote	Result
Hornblower, William	Cleveland (D)	Blatchford	9/19/1893				NA
Hornblower, William	Cleveland (D)	Blatchford	12/5/1893	1/15/1894	41	24-30	R
Peckham, Wheeler	Cleveland (D)	Blatchford	1/22/1894	2/16/1894	25	32-41	R
White, Edward	Cleveland (D)	Blatchford	2/19/1894	2/19/1894	0	V	C
Peckham, Rufus	Cleveland (D)	Jackson	12/3/1895	12/9/1895	6	V	C
McKenna, Joseph	McKinley (R)	Field	12/16/1897	1/21/1898	36	V	C
Holmes, Oliver	T. Roosevelt (R)	Gray	12/2/1902	12/4/1902	2	V	C
Day, William	T. Roosevelt (R)	Shiras	2/19/1903	2/23/1903	4	V	C
Moody, William	T. Roosevelt (R)	Brown	12/3/1906	12/12/1906	9	V	C
Lurton, Horace	Taft (R)	Peckham	12/13/1909	12/20/1909	7	V	C
Hughes, Charles	Taft (R)	Brewer	4/25/1910	5/2/1910	7	V	C
White, Edward*	Taft (R)	Fuller	12/12/1910	12/12/1910	0	V	C
Van Devanter, Willis	Taft (R)	White	12/12/1910	12/15/1910	3	V	C
Lamar, Joseph	Taft (R)	Moody	12/12/1910	12/15/1910	3	V	C
Pitney, Mahlon	Taft (R)	Harlan I	2/19/1912	3/13/1912	23	50-26	C
McReynolds, James	Wilson (D)	Lurton	8/19/1914	8/29/1914	10	44-6	C
Brandeis, Louis	Wilson (D)	Lamar	1/28/1916	6/1/1916	125	47-22	C
Clarke, John	Wilson (D)	Hughes	7/14/1916	7/24/1916	10	V	C
Taft, W. H.*	Harding (R)	White	6/30/1921	6/30/1921	0	60-4	C
Sutherland, George	Harding (R)	Clarke	9/5/1922	9/5/1922	0	V	C
Butler, Pierce	Harding (R)	Day	11/21/1922				NA
Butler, Pierce	Harding (R)	Day	12/5/1922	12/21/1922	16	61-8	C
Sanford, Edward	Harding (R)	Pitney	1/24/1923	1/29/1923	5	V	C
Stone, Harlan	Coolidge (R)	McKenna	1/5/1925	2/5/1925	31	71-6	C
Hughes, Charles*	Hoover (R)	Taft	2/3/1930	2/13/1930	10	52-26	C
Parker, John	Hoover (R)	Sanford	3/21/1930	5/7/1930	47	39-41	R
Roberts, Owen	Hoover (R)	Sanford	5/9/1930	5/20/1930	11	V	C
Cardozo, Benjamin	Hoover (R)	Holmes	2/15/1932	2/24/1932	9	V	C
Black, Hugo	FDR (D)	Van Devanter	8/12/1937	8/17/1937	5	63-16	C
Reed, Stanley Forman	FDR (D)	Sutherland	1/15/1938	1/25/1938	10	V	C
Frankfurter, Felix	FDR (D)	Cardozo	1/5/1939	1/17/1939	12	V	C
Douglas, William	FDR (D)	Brandeis	3/20/1939	4/4/1939	15	62-4	C
Murphy, Frank	FDR (D)	Butler	1/4/1940	1/16/1940	12	V	C
Byrnes, James	FDR (D)	McReynolds	6/12/1941	6/12/1941	0	V	C
Stone, Harlan*	FDR (D)	Hughes	6/12/1941	6/27/1941	15	V	C
Jackson, Robert	FDR (D)	Stone	6/12/1941	7/7/1941	25	V	C
Rutledge, Wiley	FDR (D)	Byrnes	1/11/1943	2/8/1943	28	V	C
Burton, Harold	Truman(D)	Roberts	9/18/1945	9/19/1945	1	V	C
Vinson, Fred*	Truman(D)	Stone	6/6/1946	6/20/1946	14	V	C
Clark, Tom	Truman(D)	Murphy	8/2/1949	8/18/1949	16	73-8	C
Minton, Sherman	Truman(D)	Rutledge	9/15/1949	10/4/1949	19	48-16	C
Warren, Earl*	Eisenhower (R)	Vinson	1/11/1954	3/1/1954	49	V	C
Harlan II, John	Eisenhower (R)	Jackson	11/9/1954				NA
Harlan II, John	Eisenhower (R)	Jackson	1/10/1955	3/16/1955	65	71-11	C

Nominee	POTUS	Replacing	Nominated [§]	Result Date	Days Nom-Result	Vote	Result
Brennan, William	Eisenhower (R)	Minton	1/14/1957	3/19/1957	64	V	C
Whittaker, Charles	Eisenhower (R)	Reed	3/2/1957	3/19/1957	17	V	C
Stewart, Potter	Eisenhower (R)	Burton	1/17/1959	5/5/1959	108	70-17	C
White, Byron	Kennedy (D)	Whittaker	4/3/1962	4/11/1962	8	V	C
Goldberg, Arthur	Kennedy (D)	Frankfurter	8/31/1962	9/25/1962	25	V	C
Fortas, Abe	LBJ (D)	Goldberg	7/28/1965	8/11/1965	14	V	C
Marshall, Thurgood	LBJ (D)	Clark	6/13/1967	8/30/1967	78	69-11	C
Fortas, Abe*	LBJ (D)	Warren	6/26/1968	10/4/1968	100		W
Thornberry, Homer	LBJ (D)	Fortas	6/26/1968	10/4/1968	100		W
Burger, Warren*	Nixon (R)	Warren	5/23/1969	6/9/1969	17	74-3	C
Haynsworth, Clement	Nixon (R)	Fortas	8/21/1969	11/21/1969	92	45-55	R
Carswell, Harrold	Nixon (R)	Fortas	1/19/1970	4/8/1970	79	45-51	R
Blackmun, Harry	Nixon (R)	Fortas	4/15/1970	5/12/1970	27	94-0	C
Powell, Lewis	Nixon (R)	Black	10/22/1971	12/6/1971	45	89-1	C
Rehnquist, William	Nixon (R)	Harlan II	10/22/1971	12/10/1971	49	68-26	C
Stevens, John Paul	Ford (R)	Douglas	11/28/1975	12/17/1975	19	98-0	C
O'Connor, Sandra Day	Reagan (R)	Stewart	8/19/1981	9/21/1981	33	99-0	C
Rehnquist, William*	Reagan (R)	Burger	6/20/1986	9/17/1986	89	65-33	C
Scalia, Antonin	Reagan (R)	Rehnquist	6/24/1986	9/17/1986	85	98-0	C
Bork, Robert	Reagan (R)	Powell	7/7/1987	10/23/1987	108	42-58	R
Kennedy, Anthony	Reagan (R)	Powell	11/30/1987	2/3/1988	65	97-0	C
Souter, David	H.W. Bush (R)	Brennan	7/25/1990	10/2/1990	69	90-9	C
Thomas, Clarence	H.W. Bush (R)	Marshall	7/8/1991	10/15/1991	99	52-48	C
Ginsburg, Ruth Bader	Clinton (D)	White	6/22/1993	8/3/1993	42	96-3	C
Breyer, Stephen	Clinton (D)	Blackmun	5/17/1994	7/29/1994	73	87-9	C
Roberts, John	W. Bush (R)	O'Connor	7/29/2005	9/6/2005	39		W
Roberts, John*	W. Bush (R)	Rehnquist	9/6/2005	9/29/2005	23	78-22	C
Miers, Harriet	W. Bush (R)	O'Connor	10/7/2005	10/28/2005	21		W
Alito, Samuel	W. Bush (R)	O'Connor	11/10/2005	1/31/2006	82	58-42	C
Sotomayor, Sonia	Obama (D)	Souter	6/1/2009	8/6/2009	66	68-31	C
Kagan, Elena	Obama (D)	Stevens	5/10/2010	8/5/2010	87	63-37	C
Garland, Merrick	Obama (D)	Scalia	3/16/2016				NA
Gorsuch, Neil	Trump (R)	Scalia	2/1/2017	4/7/2017	65	54-45	C
Kavanaugh, Brett	Trump (R)	Kennedy	7/10/2018	10/6/2018	88	50-48	C
Barrett, Amy Coney	Trump (R)	Ginsburg	9/29/2020	10/26/2021	28	52-48	C

*Chief Justice

[†]Unaffiliated after expulsion from Whig party in 1841.
^{††}National Union party 1864-1868

F = Federalist
D-R = Democratic-Republican
D = Democrat
W = Whig
R = Republican.

[‡]Ellsworth technically replaced recess-appointed CJ Rutledge.

[§]Date of official nomination letter to the Senate.

V = Voice Vote

^ΔDied before taking office.

C = Confirmed and Served
D = Confirmed and Declined
NA = No Action
P = Postponed
R = Rejected
W = Withdrawn

The following chart records Supreme Court nominations along with relevant political party data for each nomination. This chart focuses on the Republican-Democratic binary in American politics and begins in 1869 with the Grant administration to avoid the unnecessary confusion that could result from the fluid political alignments before Grant took office. Andrew Johnson, Grant's predecessor, was the last U.S. president to take office as a member of a party (National Union) other than the Democratic or Republican parties.

Supreme Court Nominations (1869-2020) Political Data

Nominee	POTUS	Vacancy Arose in Presidential Election Year?	POTUS Appointing Previous Justice	Seat Switches Parties?*	Senate at Nomination	Days Nom- Result	Vote	Result
Hoar, Ebenezer	Grant (R)				11D-61R	51	24-33	R
Stanton, Edwin	Grant (R)		Polk	Yes	11D-61R	0	46-11	C ^A
Strong, William	Grant (R)		Polk	Yes	11D-61R	11		C
Bradley, Joseph	Grant (R)				11D-61R	42	46-9	C
Hunt, Ward	Grant (R)	Yes	Tyler	Yes	17D-57R	8	V	C
Williams, George*	Grant (R)		Lincoln	No	19D-54R	38		W
Cushing, Caleb*	Grant (R)		Lincoln	No	19D-54R	4		W
Waite, Morrison*	Grant (R)		Lincoln	No	19D-54R	2	63-0	C
Harlan I, John	Hayes (R)		Lincoln	No	36D-39R-1I	44	V	C
Woods, William	Hayes (R)	Yes	Grant	No	43D-33R	6	39-8	C
Matthews, Stanley	Hayes (R)		Lincoln	No	37D-37R-2I		24-33	NA
Matthews, Stanley	Garfield (R)		Lincoln	No	37D-37R-2I	59	24-23	C
Gray, Horace	Arthur (R)		Buchanan	Yes	37D-37R-2I	1	51-5	C
Conkling, Roscoe	Arthur (R)		Grant	No	37D-37R-2I	6	39-12	D
Blatchford, Samuel	Arthur (R)		Grant	No	37D-37R-2I	9	V	C
Lamar, Lucius	Cleveland (D)		Hayes	Yes	37D-39R	41	32-28	C
Fuller, Melville*	Cleveland (D)	Yes	Grant	Yes	37D-39R	81	41-20	C
Brewer, David	B. Harrison (R)		Garfield	No	37D-47R	14	53-11	C
Brown, Henry	B. Harrison (R)		Lincoln	No	37D-47R	6	V	C
Shiras, George Jr.	B. Harrison (R)	Yes	Grant	No	39D-47R-2I	7	V	C
Jackson, Howell	B. Harrison (R)		Cleveland	Yes	44D-38R-3I	16	V	C
Hornblower, William	Cleveland (D)		Arthur	Yes	44D-38R-3I			NA
Hornblower, William	Cleveland (D)		Arthur	Yes	44D-38R-3I	41	24-30	R
Peckham, Wheeler	Cleveland (D)		Arthur	Yes	44D-38R-3I	25	32-41	R
White, Edward	Cleveland (D)		Arthur	Yes	44D-38R-3I	0	V	C
Peckham, Rufus	Cleveland (D)		B. Harrison	Yes	39D-44R-5I	6	V	C
McKenna, Joseph	McKinley (R)		Lincoln	No	34D-46R-10I	36	V	C
Holmes, Oliver	T. Roosevelt (R)		Arthur	No	29D-56R-3I	2	V	C
Day, William	T. Roosevelt (R)		B. Harrison	No	32D-58R	4	V	C
Moody, William	T. Roosevelt (R)		B. Harrison	No	32D-58R	9	V	C
Lurton, Horace	Taft (R)		Cleveland	Yes	32D-59R	7	V	C
Hughes, Charles	Taft (R)		B. Harrison	No	32D-59R	7	V	C
White, Edward*	Taft (R)		Cleveland	Yes	32D-59R	0	V	C
Van Devanter, Willis	Taft (R)		Cleveland	Yes	32D-59R	3	V	C
Lamar, Joseph	Taft (R)		T. Roosevelt	No	32D-59R	3	V	C
Pitney, Mahlon	Taft (R)		Hayes	No	43D-49R	23	50-26	C

Nominee	POTUS	Vacancy Arose in Presidential Election Year?	POTUS Appointing Previous Justice	Seat Switches Parties?*	Senate at Nomination	Days Nom- Result	Vote	Result
McReynolds, James	Wilson (D)		Taft	Yes	51D-44R-11	10		C
Brandeis, Louis	Wilson (D)	Yes	Taft	Yes	56D-39R-11	125	47-22	C
Clarke, John	Wilson (D)	Yes	Taft	Yes	51D-44R-11	10		C
Taft, W. H.*	Harding (R)		Taft	No	37D-59R	0		C
Sutherland, George	Harding (R)		Wilson	Yes	37D-59R	0		C
Butler, Pierce	Harding (R)		T. Roosevelt	No	37D-59R			NA
Butler, Pierce	Harding (R)		T. Roosevelt	No	37D-59R	16	61-8	C
Sanford, Edward	Harding (R)		Taft	No	43D-51R-2I	5		C
Stone, Harlan	Coolidge (R)		McKinley	No	40D-54R-11	31		C
Hughes, Charles*	Hoover (R)		Harding	No	39D-56R-11	10	52-26	C
Parker, John	Hoover (R)		Harding	No	39D-56R-11	47	39-41	R
Roberts, Owen	Hoover (R)		Harding	No	39D-56R-11	11	V	C
Cardozo, Benjamin	Hoover (R)	Yes	T. Roosevelt	No	47D-48R-11	9	V	C
Black, Hugo	FDR (D)		Taft	Yes	75D-17R-4I	5	63-16	C
Reed, Stanley Forman	FDR (D)		Harding	Yes	75D-17R-4I	10	V	C
Frankfurter, Felix	FDR (D)		Hoover	Yes	69D-23R-4I	12	V	C
Douglas, William	FDR (D)		Wilson	No	69D-23R-4I	15	62-4	C
Murphy, Frank	FDR (D)		Harding	Yes	69D-23R-4I	12	V	C
Byrnes, James	FDR (D)		Wilson	No	66D-28R-2I	0	V	C
Stone, Harlan*	FDR (D)		Hoover	Yes	66D-28R-2I	15	V	C
Jackson, Robert	FDR (D)		Coolidge	Yes	66D-28R-2I	25	V	C
Rutledge, Wiley	FDR (D)		FDR	No	57D-38R-11	28	V	C
Burton, Harold	Truman(D)		Hoover	Yes	57D-38R-11	1	V	C
Vinson, Fred*	Truman(D)		FDR	No	57D-38R-11	14	V	C
Clark, Tom	Truman(D)		FDR	No	54D-42R	16	73-8	C
Minton, Sherman	Truman(D)		FDR	No	54D-42R	19	48-16	C
Warren, Earl*	Eisenhower (R)		Truman	Yes	46D-48R-2I	49	V	C
Harlan II, John	Eisenhower (R)		FDR	Yes	46D-48R-2I			NA
Harlan II, John	Eisenhower (R)		FDR	Yes	48D-47R-11	65	71-11	C
Brennan, William	Eisenhower (R)	Yes	Truman	Yes	49D-47R	64	V	C
Whittaker, Charles	Eisenhower (R)		FDR	Yes	49D-47R	17	V	C
Stewart, Potter	Eisenhower (R)		Truman	Yes	64D-34R	108	70-17	C
White, Byron	Kennedy (D)		Eisenhower	Yes	64D-36R	8	V	C
Goldberg, Arthur	Kennedy (D)		FDR	No	64D-36R	25	V	C
Fortas, Abe	LBJ (D)		Kennedy	No	68D-32R	14	V	C
Marshall, Thurgood	LBJ (D)		Truman	No	64D-36R	78	69-11	C
Fortas, Abe*	LBJ (D)	Yes [†]	Eisenhower	Yes	64D-36R	100		W
Thornberry, Homer	LBJ (D)	Yes [†]	LBJ	No	64D-36R	100		W
Burger, Warren*	Nixon (R)		Eisenhower	No	58D-42R	17	74-3	C
Haynsworth, Clement	Nixon (R)		LBJ	Yes	58D-42R	92	45-55	R
Carswell, Harrold	Nixon (R)		LBJ	Yes	58D-42R	79	45-51	R

Nominee	POTUS	Vacancy Arose in Presidential Election Year?	POTUS Appointing Previous Justice	Seat Switches Parties?‡	Senate at Nomination	Days Nom- Result	Vote	Result
Blackmun, Harry	Nixon (R)		LBJ	Yes	58D-42R	27	94-0	C
Powell, Lewis	Nixon (R)		FDR	Yes	54D-44R-2I	45	89-1	C
Rehnquist, William	Nixon (R)		Eisenhower	No	54D-44R-2I	49	68-26	C
Stevens, John Paul	Ford (R)		FDR	Yes	61D-37R-2I	19	98-0	C
O'Connor, Sandra Day	Reagan (R)		Eisenhower	No	46D-53R-1I	33	99-0	C
Rehnquist, William*	Reagan (R)		Nixon	No	47D-53R	89	65-33	C
Scalia, Antonin	Reagan (R)		Nixon	No	47D-53R	85	98-0	C
Bork, Robert	Reagan (R)		Nixon	No	55D-45R	108	42-58	R
Kennedy, Anthony	Reagan (R)		Nixon	No	55D-45R	65	97-0	C
Souter, David	H.W. Bush (R)		Eisenhower	No	55D-45R	69	90-9	C
Thomas, Clarence	H.W. Bush (R)		LBJ	Yes	56D-44R	99	52-48	C
Ginsburg, Ruth Bader	Clinton (D)		Kennedy	No	57D-43R	42	96-3	C
Breyer, Stephen	Clinton (D)		Nixon	Yes	57D-43R	73	87-9	C
Roberts, John	W. Bush (R)		Reagan	No	44D-55R-1I	39		W
Roberts, John*	W. Bush (R)		Reagan	No	44D-55R-1I	23	78-22	C
Miers, Harriet	W. Bush (R)		Reagan	No	44D-55R-1I	21		W
Alito, Samuel	W. Bush (R)		Reagan	No	44D-55R-1I	82	58-42	C
Sotomayor, Sonia	Obama (D)		H.W. Bush	Yes	58D-40R-2I	66	68-31	C
Kagan, Elena	Obama (D)		Ford	Yes	57D-41R-2I	87	63-37	C
Garland, Merrick	Obama (D)	Yes	Reagan	Yes	44D-54R-2I			NA
Gorsuch, Neil	Trump (R)	Yes	Reagan	No	46D-52R-2I	65	54-45	C
Kavanaugh, Brett	Trump (R)		Reagan	No	47D-51R-2I	88	50-48	C
Barrett, Amy Coney	Trump (R)	Yes	Clinton	Yes	45D-53R-2I	28	52-48	C

*Chief Justice

†Earl Warren had submitted his resignation letter in 1968, effective on the confirmation of his successor. His resignation became effective in 1969.

‡Determined by the party of the appointing president.

R = Republicans
D = Democrats
I = Independents
(Includes third parties)

V = Voice
Vote

‡Died before taking office.

C = Confirmed and Served
D = Confirmed and Declined
NA = No Action
P = Postponed
R = Rejected
W = Withdrawn

Confirmed Supreme Court Justices by Length of Time to Confirm

Rank	Justice	Confirmation Date	Days Nomination-Confirmation[†]
1	Brandeis, Louis	6/1/1916	125
2	Stewart, Potter	5/5/1959	108
3	Thomas, Clarence	10/15/1991	99
4	Rehnquist, William*	9/17/1986	89
5	Kavanaugh, Brett	10/6/2018	88
6	Kagan, Elena	8/5/2010	87
7	Scalia, Antonin	9/17/1986	85
8	Alito, Samuel	1/31/2006	82
9	Fuller, Melville*	7/20/1888	81
10	Marshall, Thurgood	8/30/1967	78
11	Taney, Roger*	3/15/1836	77
11	Barbour, Philip	3/15/1836	77
13	Breyer, Stephen	7/29/1994	73
14	Souter, David	10/2/1990	69
15	Sotomayor, Sonia	8/6/2009	66
16	Harlan II, John	3/16/1955	65
16	Kennedy, Anthony	2/3/1988	65
16	Gorsuch, Neil	4/7/2017	65
19	Brennan, William	3/19/1957	64
20	Matthews, Stanley	5/12/1881	59
21	Warren, Earl*	3/1/1954	49
21	Rehnquist, William	12/10/1971	49
23	Powell, Lewis	12/6/1971	45
24	Harlan I, John	11/29/1877	44
25	Bradley, Joseph	3/21/1870	42
25	Ginsburg, Ruth Bader	8/3/1993	42
27	Lamar, Lucius	1/16/1888	41
28	McKenna, Joseph	1/21/1898	36
29	Clifford, Nathan	1/12/1858	34
30	O'Connor, Sandra Day	9/21/1981	33
31	Stone, Harlan	2/5/1925	31
32	Trimble, Robert	5/9/1826	28
32	Rutledge, Wiley	2/8/1943	28
32	Barret, Amy Coney	10/26/2020	28
34	Blackmun, Harry	5/12/1970	27
35	Jackson, Robert	7/7/1941	25
35	Goldberg, Arthur	9/25/1962	25
37	Pitney, Mahlon	3/13/1912	23
37	Roberts, John*	9/29/2005	23 ^{††}
39	Minton, Sherman	10/4/1949	19
39	Stevens, John Paul	12/17/1975	19
41	Whittaker, Charles	3/19/1957	17

Rank	Justice	Confirmation Date	Days Nomination-Confirmation[†]
41	Burger, Warren*	6/9/1969	17
43	Jackson, Howell	2/18/1893	16
43	Butler, Pierce	12/21/1922	16
43	Clark, Tom	8/18/1949	16
46	Douglas, William	4/4/1939	15
46	Stone, Harlan*	6/27/1941	15
48	Brewer, David	12/18/1889	14
48	Vinson, Fred*	6/20/1946	14
48	Fortas, Abe	8/11/1965	14
51	Frankfurter, Felix	1/17/1939	12
51	Murphy, Frank	1/16/1940	12
53	Woodbury, Levi	1/3/1846	11
53	Strong, William	2/18/1870	11
53	Roberts, Owen	5/20/1930	11
56	Nelson, Samuel	2/14/1845	10
56	McReynolds, James	8/29/1914	10
56	Clarke, John	7/24/1916	10
56	Hughes, Charles*	2/13/1930	10
56	Reed, Stanley Forman	1/25/1938	10
61	Curtis, Benjamin	12/20/1851	9
61	Blatchford, Samuel	3/22/1882	9
61	Moody, William	12/12/1906	9
61	Cardozo, Benjamin	2/24/1932	9
65	Hunt, Ward	12/11/1872	8
65	White, Byron	4/11/1962	8
67	Johnson, Thomas	11/7/1791	7
67	Marshall, John*	1/27/1801	7
67	McKinley, John	9/25/1837	7
67	Davis, David	12/8/1862	7
67	Shiras, George Jr.	7/26/1892	7
67	Lurton, Horace	12/20/1909	7
67	Hughes, Charles	5/2/1910	7
74	Moore, Alfred	12/10/1799	6
74	Woods, William	12/21/1880	6
74	Brown, Henry	12/29/1890	6
74	Peckham, Rufus	12/9/1895	6
78	Catron, John	3/8/1837	5
78	Daniel, Peter	3/2/1841	5
78	Sanford, Edward	1/29/1923	5
78	Black, Hugo	8/17/1937	5
82	Livingston, H. Brockholst	12/17/1806	4
82	Thompson, Smith	12/9/1823	4
82	Field, Stephen	3/10/1863	4

Rank	Justice	Confirmation Date	Days Nomination-Confirmation[†]
82	Day, William	2/23/1903	4
86	Story, Joseph	11/18/1811	3
86	Duvall, Gabriel	11/18/1811	3
86	Wayne, James	1/9/1835	3
86	Swayne, Noah	1/24/1862	3
86	Van Devanter, Willis	12/15/1910	3
86	Lamar, Joseph	12/15/1910	3
92	Jay, John*	9/26/1789	2
92	Rutledge, John	9/26/1789	2
92	Cushing, William	9/26/1789	2
92	Wilson, James	9/26/1789	2
92	Blair, John	9/26/1789	2
92	Iredell, James	2/10/1790	2
92	Johnson, William	3/24/1804	2
92	Todd, Thomas	3/2/1807	2
92	Baldwin, Henry	1/6/1830	2
92	Waite, Morrison*	1/21/1874	2
92	Holmes, Oliver	12/4/1902	2
103	Chase, Samuel	1/27/1796	1
103	Ellsworth, Oliver*	3/4/1796	1
103	Washington, Bushrod	12/20/1798	1
103	McLean, John	3/7/1829	1
103	Grier, Robert	8/4/1846	1
103	Campbell, John	3/22/1853	1
103	Gray, Horace	12/20/1881	1
103	Burton, Harold	9/19/1945	1
111	Paterson, William	3/4/1793	0
111	Miller, Samuel	7/16/1862	0
111	Chase, Salmon P.*	12/6/1864	0
111	Stanton, Edwin**	12/20/1869	0
111	White, Edward	2/19/1894	0
111	White, Edward*	12/12/1910	0
111	Taft, W. H.*	6/30/1921	0
111	Sutherland, George	9/5/1922	0
111	Byrnes, James	6/12/1941	0

*Chief Justice

**Died before taking office.

[†]Not including prior unsuccessful or withdrawn nominations.

^{††}Not including the additional 39 days Roberts's nomination for Associate Justice was pending prior to his nomination for Chief Justice.

Supreme Court Justices by Confirmation Vote Percentage (Voice Votes Excluded)

Justice	Confirmation		Percentage	
	Date	Vote	Margin	Yay Votes
Kavanaugh, Brett	10/6/2018	50-48	2	51.02%
Matthews, Stanley	5/12/1881	24-23	1	51.06%
Thomas, Clarence	10/15/1991	52-48	4	52.00%
Barrett, Amy Coney	10/26/2020	52-48	4	52.00%
Clifford, Nathan	1/12/1858	26-23	3	53.06%
Lamar, Lucius	1/16/1888	32-28	4	53.33%
Gorsuch, Neil	4/7/2017	54-45	9	54.55%
Alito, Samuel	1/31/2006	58-42	16	58.00%
Kagan, Elena	8/5/2010	63-37	26	63.00%
Catron, John	3/8/1837	28-15	13	65.12%
Pitney, Mahlon	3/13/1912	50-26	24	65.79%
Taney, Roger*	3/15/1836	29-15	14	65.91%
Rehnquist, William*	9/17/1986	65-33	32	66.33%
Hughes, Charles*	2/13/1930	52-26	26	66.67%
Fuller, Melville*	7/20/1888	41-20	21	67.21%
Brandeis, Louis	6/1/1916	47-22	25	68.12%
Sotomayor, Sonia	8/6/2009	68-31	37	68.69%
Rehnquist, William	12/10/1971	68-26	42	72.34%
Barbour, Philip	3/15/1836	30-11	19	73.17%
Minton, Sherman	10/4/1949	48-16	32	75.00%
Roberts, John*	9/29/2005	78-22	56	78.00%
Black, Hugo	8/17/1937	63-16	47	79.75%
Stewart, Potter	5/5/1959	70-17	53	80.46%
Stanton, Edwin**	12/20/1869	46-11	35	80.70%
Brewer, David	12/18/1889	53-11	42	82.81%
Woods, William	12/21/1880	39-8	31	82.98%
Daniel, Peter	3/2/1841	25-5	20	83.33%
Bradley, Joseph	3/21/1870	46-9	37	83.64%
Trimble, Robert	5/9/1826	27-5	22	84.38%
Marshall, Thurgood	8/30/1967	69-11	58	86.25%
Harlan II, John	3/16/1955	71-11	60	86.59%
McReynolds, James	8/29/1914	44-6	38	88.00%
Butler, Pierce	12/21/1922	61-8	53	88.41%
Clark, Tom	8/18/1949	73-8	65	90.12%
Breyer, Stephen	7/29/1994	87-9	78	90.63%
Souter, David	10/2/1990	90-9	81	90.91%
Gray, Horace	12/20/1881	51-5	46	91.07%
Stone, Harlan	2/5/1925	71-6	65	92.21%
Taft, W. H.*	6/30/1921	60-4	56	93.75%
Douglas, William	4/4/1939	62-4	58	93.94%
Baldwin, Henry	1/6/1830	41-2	39	95.35%
Ellsworth, Oliver*	3/4/1796	21-1	20	95.45%

Burger, Warren*	6/9/1969	74-3	71	96.10%
Ginsburg, Ruth Bader	8/3/1993	96-3	93	96.97%
Swayne, Noah	1/24/1862	38-1	37	97.44%
Powell, Lewis	12/6/1971	89-1	88	98.89%
Waite, Morrison*	1/21/1874	63-0	63	100%
Blackmun, Harry	5/12/1970	94-0	94	100%
Kennedy, Anthony	2/3/1988	97-0	97	100%
Stevens, John Paul	12/17/1975	98-0	98	100%
Scalia, Antonin	9/17/1986	98-0	98	100%
O'Connor, Sandra Day	9/21/1981	99-0	99	100%

*Chief Justice

**Died before taking office.

Supreme Court Justices by Length of Time in Office

Rank	Justice	Length in Days [†]	Start Date	End Date
1	Douglas, William	13,358	4/17/1939	11/12/1975
2	Field, Stephen	12,614	5/20/1863	12/1/1897
3	Stevens, John Paul	12,611	12/19/1975	6/29/2010
4	Marshall, John*	12,570	2/4/1801	7/6/1835
5	Black, Hugo	12,447	8/19/1937	9/17/1971
6	Harlan, John	12,360	12/10/1877	10/14/1911
7	Brennan, William	12,330	10/16/1956	7/20/1990
8	Rehnquist, William*	12,293	1/7/1972 9/26/1986	9/26/1986 9/3/2005
9	Story, Joseph	12,273	2/3/1812	9/10/1845
10	Wayne, James	11,860	1/14/1835	7/5/1867
11	McLean, John	11,406	1/11/1830	4/4/1861
12	White, Byron	11,396	4/16/1962	6/28/1993
13	Washington, Bushrod	11,339	11/9/1798	11/26/1829
14	Kennedy, Anthony	11,121	2/18/1988	7/31/2018
15	Johnson, William	11,046	5/7/1804	8/4/1834
16	Scalia, Antonin	10,732	9/26/1986	2/13/2016
17	Thomas, Clarence	10,682	10/23/1991	<i>Incumbent</i>
18	Holmes, Oliver	10,627	12/8/1902	1/12/1932
19	Taney, Roger*	10,425	3/28/1836	10/12/1864
20	Miller, Samuel	10,311	7/21/1862	10/13/1890
21	Catron, John	10,256	5/1/1837	5/30/1865
22	Nelson, Samuel	10,136	2/27/1845	11/28/1872
23	White, Edward*	9,929	3/12/1894 12/19/1910	12/19/1910 5/19/1921
24	Ginsburg, Ruth Bader	9,901	8/10/1993	9/18/2020
25	McKenna, Joseph	9,840	1/26/1898	1/5/1925
26	Breyer, Stephen	9,667	8/3/1994	<i>Incumbent</i>
27	Van Devanter, Willis	9,647	1/3/1911	6/2/1937
28	McReynolds, James	9,608	10/12/1914	1/31/1941
29	O'Connor, Sandra Day	8,894	9/25/1981	1/31/2006
30	Blackmun, Harry	8,821	6/9/1970	8/3/1994
31	Marshall, Thurgood	8,765	10/2/1967	10/1/1991
32	Frankfurter, Felix	8,611	1/30/1939	8/28/1962
33	Clifford, Nathan	8,586	1/21/1858	7/25/1881
34	Grier, Robert	8,575	8/10/1846	1/31/1870
35	Duvall, Gabriel	8,453	11/23/1811	1/14/1835
36	Stewart, Potter	8,298	10/14/1958	7/3/1981
37	Brandeis, Louis	8,288	6/5/1916	2/13/1939
38	Bradley, Joseph	7,975	3/23/1870	1/22/1892
39	Fuller, Melville*	7,938	10/8/1888	7/4/1910
40	Stone, Harlan*	7,721	3/2/1925 7/3/1941	7/2/1941 4/22/1946

Rank	Justice	Length in Days[†]	Start Date	End Date
41	Gray, Horace	7,553	1/9/1882	9/15/1902
42	Cushing, William	7,527	2/2/1790	9/13/1810
43	Thompson, Smith	7,413	9/1/1823	12/18/1843
44	Brewer, David	7,385	1/6/1890	3/28/1910
45	Day, William	7,196	3/2/1903	11/13/1922
46	Reed, Stanley Forman	6,965	1/31/1938	2/25/1957
47	Swayne, Noah	6,937	1/27/1862	1/24/1881
48	Todd, Thomas	6,854	5/4/1807	2/7/1826
49	Souter, David	6,838	10/9/1990	6/29/2009
50	Daniel, Peter	6,716	1/10/1842	5/31/1860
51	Clark, Tom	6,501	8/24/1949	6/12/1967
52	Burger, Warren*	6,304	6/23/1969	9/26/1986
53	Hughes, Charles*	6,214	10/10/1910 2/24/1930	6/10/1916 6/30/1941
54	Butler, Pierce	6,162	1/2/1923	11/16/1939
55	Harlan, John II	6,023	3/28/1955	9/23/1971
56	Livingston, H. Brockholst	5,901	1/20/1807	3/18/1823
57	Warren, Earl*	5,740	10/5/1953	6/23/1969
58	Powell, Lewis	5,649	1/7/1972	6/26/1987
59	Brown, Henry	5,621	1/5/1891	5/28/1906
60	Chase, Samuel	5,613	2/4/1796	6/19/1811
61	Roberts, John*	5,592	9/29/2005	<i>Incumbent</i>
62	Sutherland, George	5,586	10/2/1922	1/17/1938
63	Roberts, Owen	5,538	6/2/1930	7/31/1945
64	Alito, Samuel	5,468	1/31/2006	<i>Incumbent</i>
65	McKinley, John	5,305	1/9/1838	7/19/1852
66	Baldwin, Henry	5,207	1/18/1830	4/21/1844
67	Davis, David	5,198	12/10/1862	3/4/1877
68	Waite, Morrison*	5,133	3/4/1874	3/23/1888
69	Peckham, Rufus	5,039	1/6/1896	10/24/1909
70	Paterson, William	4,929	3/11/1793	9/9/1806
71	Jackson, Robert	4,838	7/11/1941	10/9/1954
72	Burton, Harold	4,760	10/1/1945	10/13/1958
73	Sotomayor, Sonia	4,183	8/8/2009	<i>Incumbent</i>
74	Blatchford, Samuel	4,113	4/3/1882	7/7/1893
75	Pitney, Mahlon	3,940	3/18/1912	12/31/1922
76	Strong, William	3,928	3/14/1870	12/14/1880
77	Kagan, Elena	3,819	8/7/2010	<i>Incumbent</i>
78	Shiras, George Jr.	3,787	10/10/1892	2/23/1903
79	Murphy, Frank	3,452	2/5/1940	7/19/1949
80	Iredell, James	3,448	5/12/1790	10/20/1799
81	Hunt, Ward	3,305	1/9/1873	1/27/1882
82	Wilson, James	3,242	10/5/1789	8/21/1798
83	Taft, W.H.*	3,129	7/11/1921	2/3/1930

Rank	Justice	Length in Days[†]	Start Date	End Date
84	Chase, Salmon P.*	3,065	12/15/1864	5/7/1873
85	Campbell, John	2,941	4/11/1853	4/30/1861
86	Matthews, Stanley	2,866	5/17/1881	3/22/1889
87	Vinson, Fred*	2,633	6/24/1946	9/8/1953
88	Sanford, Edward	2,574	2/19/1923	3/8/1930
89	Minton, Sherman	2,560	10/12/1949	10/15/1956
90	Rutledge, Wiley	2,399	2/15/1943	9/10/1949
91	Woods, William	2,320	1/5/1881	5/14/1887
92	Cardozo, Benjamin	2,308	3/14/1932	7/9/1938
93	Curtis, Benjamin	2,182	10/10/1851	9/30/1857
94	Woodbury, Levi	2,172	9/23/1845	9/4/1851
95	Clarke, John	2,170	10/9/1916	9/18/1922
96	Blair, John	2,091	2/2/1790	10/25/1795
97	Jay, John*	2,079	10/19/1789	6/29/1795
98	Whittaker, Charles	1,832	3/25/1957	3/31/1962
98	Lamar, Lucius	1,832	1/18/1888	1/23/1893
100	Lamar, Joseph	1,825	1/3/1911	1/2/1916
101	Barbour, Philip	1,750	5/12/1836	2/25/1841
102	Ellsworth, Oliver*	1,742	3/8/1796	12/15/1800
103	Lurton, Horace	1,651	1/3/1910	7/12/1914
104	Moody, William Henry	1,434	12/17/1906	11/20/1910
105	Gorsuch, Neil	1,381	4/10/2017	<i>Incumbent</i>
106	Moore, Alfred	1,375	4/21/1800	1/26/1804
107	Fortas, Abe	1,318	10/4/1965	5/14/1969
108	Goldberg, Arthur	1,028	10/1/1962	7/25/1965
109	Jackson, Howell	887	3/4/1893	8/8/1895
110	Kavanaugh, Brett	837	10/6/2018	<i>Incumbent</i>
111	Trimble, Robert	801	6/16/1826	8/25/1828
112	Rutledge, John*	521	2/15/1790 8/12/1795	3/5/1791 12/28/1795
113	Byrnes, James	452	7/8/1941	10/3/1942
114	Johnson, Thomas	163	8/6/1792	1/16/1793
115	Barret, Amy Coney	85	10/27/2020	<i>Incumbent</i>

*Chief Justice

[†]Sum of all terms served.
Incumbents calculated as of
1/20/2021.

Supreme Court Justices by Age at Departure from Court

Rank	Justice	Age at Departure	Age at Death
1	Holmes, Oliver	90	93
1	Stevens, John Paul	90	99
3	Ginsburg, Ruth Bader	87	87
3	Taney, Roger*	87	87
5	Black, Hugo	85	85
5	Blackmun, Harry	85	90
7	Brennan, William	84	91
8	Marshall, Thurgood	83	84
9	Brandeis, Louis	82	84
9	Duvall, Gabriel	82	91
9	Kennedy, Anthony	82	N/A
12	Breyer, Stephen	(82) [†]	N/A
13	Field, Stephen	81	82
13	McKenna, Joseph	81	83
15	Nelson, Samuel	80	81
15	Rehnquist, William*	80	80
17	Burger, Warren*	79	87
17	Catron, John	79	79
17	Frankfurter, Felix	79	82
17	Hughes, Charles*	79	86
17	Marshall, John*	79	79
17	Powell, Lewis	79	90
17	Scalia, Antonin	79	79
24	Bradley, Joseph	78	78
24	Cushing, William	78	78
24	Harlan, John	78	78
24	McReynolds, James	78	84
24	Van Devanter, Willis	78	81
24	Warren, Earl*	78	83
30	Clifford, Nathan	77	77
30	Douglas, William	77	81
30	Fuller, Melville*	77	77
30	Wayne, James	77	77
34	Daniel, Peter	76	76
34	McLean, John	76	76
34	Swayne, Noah	76	79
34	White, Byron	76	84
38	Grier, Robert	75	76
38	O'Connor, Sandra Day	75	N/A
38	Sutherland, George	75	80
38	Thompson, Smith	75	75
38	White, Edward*	75	75

43	Gray, Horace	74	74
43	Miller, Samuel	74	74
45	Blatchford, Samuel	73	73
45	Butler, Pierce	73	73
45	Day, William	73	74
45	Stone, Harlan*	73	73
49	Brewer, David	72	72
49	Harlan, John II	72	72
49	McKinley, John	72	72
49	Reed, Stanley Forman	72	95
49	Strong, William	72	87
49	Taft, W.H.*	72	72
49	Thomas, Clarence	(72) [†]	N/A
56	Hunt, Ward	71	75
56	Shiras, George Jr.	71	92
56	Waite, Morrison*	71	71
59	Alito, Samuel	(70) [†]	N/A
59	Brown, Henry	70	77
59	Burton, Harold	70	76
59	Chase, Samuel	70	70
59	Lurton, Horace	70	70
59	Peckham, Rufus	70	70
59	Roberts, Owen	70	80
66	Souter, David	69	N/A
67	Cardozo, Benjamin	68	68
68	Clark, Tom	67	77
68	Lamar, Lucius	67	67
68	Washington, Bushrod	67	67
71	Sotomayor, Sonia	(66) [†]	N/A
71	Roberts, John*	(66) [†]	N/A
71	Stewart, Potter	66	70
74	Chase, Salmon P.*	65	65
74	Clarke, John	65	87
74	Livingston, H. Brockholst	65	65
74	Minton, Sherman	65	74
74	Story, Joseph	65	65
79	Baldwin, Henry	64	64
79	Blair, John	64	68
79	Matthews, Stanley	64	64
79	Pitney, Mahlon	64	66
79	Sanford, Edward	64	64
84	Byrnes, James	63	92
84	Jackson, Howell	63	63
84	Vinson, Fred*	63	63
87	Jackson, Robert	62	62

87	Johnson, William	62	62
87	Woods, William	62	62
90	Davis, David	61	71
90	Todd, Thomas	61	61
90	Whittaker, Charles	61	72
90	Woodbury, Levi	61	61
94	Johnson, Thomas	60	86
94	Kagan, Elena	(60) [†]	N/A
94	Paterson, William	60	60
97	Murphy, Frank	59	59
98	Fortas, Abe	58	71
98	Lamar, Joseph	58	58
100	Barbour, Philip	57	57
101	Goldberg, Arthur	56	81
101	Moody, William Henry	56	63
101	Rutledge, John*	56	60
104	Ellsworth, Oliver*	55	62
104	Kavanaugh, Brett	(55) [†]	N/A
104	Rutledge, Wiley	55	55
104	Wilson, James	55	55
108	Gorsuch, Neil	(53) [†]	N/A
109	Trimble, Robert	51	51
110	Campbell, John	49	77
110	Jay, John*	49	83
112	Barrett, Amy Coney	(48) [†]	N/A
112	Iredell, James	48	48
112	Moore, Alfred	48	55
114	Curtis, Benjamin	47	64

*Chief Justice

[†]Incumbent; age as of 1/20/2021

Sources: *Court Nominations (1789-Present)*, U.S. SEN., *Supreme SEN., Justices 1789 to Present*, U.S. SUP. CT., <https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm>; *Party Division*, U.S. SEN., <https://www.senate.gov/history/partydiv.htm>; Epstein, Lee, Thomas G. Walker, Nancy Staudt, Scott Hendrickson, and Jason Roberts, “The U.S. Supreme Court Justices Database,” <http://epstein.wustl.edu/research/justicesdata.html>.

ALL ARTICLE III COURTS

Cloture Votes on Judicial Nominees (Through Trump)

POTUS	All Article III	Supreme Court	Appellate	District
Trump*	165	3	50	117
Obama*	94	0	22	72
W. Bush	30	1	29	0
Clinton	4	0	3	1
H.W. Bush	1	0	1	0
Reagan	4	1	2	1
Carter	1	0	1	0
Ford	0	0	0	0
Nixon	1	1	0	0
LBJ	1	1	0	0
All Others	0	0	0	0

Percentage of Confirmed Judges Subjected to Cloture Vote (Through Trump)

POTUS	All Article III	Supreme Court	Appellate	District
Trump*	70.5%	100%	92.6%	67.2%
Obama*	27.4%	0%	32.7%	26.9%
W. Bush	3.7%	50%	18.3%	0%
Clinton	1.1%	0%	4.6%	0.3%
H.W. Bush	0.5%	0%	2.4%	0%
Reagan	0.8%	25%	1.2%	0.3%
Carter	0.4%	0%	1.8%	0%
Ford	0%	0%	0%	0%
Nixon	0.4%	25%	0%	0%
All Others	0%	0%	0%	0%

*Where a cloture vote first failed and then passed on reconsideration (after invoking the “nuclear option”), only one cloture vote is counted.

Confirmed Article III Judges by President (Nixon-Trump)

POTUS	Confirmations	Total Nay Votes	Avg. Nay Votes Per Judge	Roll Call Votes	Avg. # of Days Nomination-Confirmation
Trump	234	5,388	23.0	199	168.0
Obama	329	2,039	6.2	223	176.0
W. Bush	325*	662	2.0	191	141.8
Clinton	378	512	1.4	50	124.2
H.W. Bush	193	93	0.5	3	98.5
Reagan	383	214	0.6	10	57.1
Carter	261	99	0.4	5	69.8
Ford	62	36	0.6	2	32.3
Nixon	238	30	0.1	4	28.5

Confirmed Circuit Judges by President (Nixon-Trump)

POTUS	Confirmations	Total Nay Votes	Avg. Nay Votes Per Judge	Roll Call Votes	Avg. # of Days Nomination-Confirmation
Trump	54	1,966	36.4	54	91.0
Obama	55	528	9.6	48	186.8
W. Bush	60*	526	8.8	48	159.6
Clinton	66	306	4.6	17	165.1
H.W. Bush	42	36	0.9	1	92.3
Reagan	83	139	1.7	5	59.7
Carter	56	74	1.3	4	70.7
Ford	11	36	3.3	1	31.5
Nixon	46	0	0	0	32.7

*Roger Gregory counted for Clinton.

Confirmed District Judges (Nixon-Trump)

POTUS	Confirmations	Total Nay Votes	Avg. Nay Votes Per Judge	Roll Call Votes	Avg. # of Days Nomination-Confirmation
Trump	174	3,238	18.6	141	192.2
Obama	268	1,443	5.4	173	173.8
W. Bush	261	72	0.3	140	138.8
Clinton	305	194	0.6	31	117
H.W. Bush	148	0	0	0	100.6
Reagan	290	42	0.1	1	55.7
Carter	202	25	0.1	1	69.9
Ford	50	0	0	0	32.8
Nixon	181	0	0	0	27.6

Sources: *Biographical Directory of Article III Federal Judges: Export*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/biographical-directory-article-iii-federal-judges-export>; *Cloture Motions*, U.S. SEN., <https://www.senate.gov/legislative/cloture/clotureCounts.htm>.