

Senate Judiciary Committee Hearings for Supreme Court Nominations: Historical Overview and Data

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After a President submits a Supreme Court nomination to the Senate, the Judiciary Committee assumes the principal responsibility for investigating the background and qualifications of each Supreme Court nominee. Since the late 1960s, the Judiciary Committee's consideration of a Supreme Court nomination typically has consisted of three distinct stages—(1) a pre-hearing investigative stage, followed by (2) public hearings, and concluding with (3) a committee decision as to whether to recommend approval of the nomination by the full Senate. This CRS Insight provides an historical overview of the second stage of this process—public hearings on nominations submitted to the Senate.

As of this writing, the Senate Judiciary Committee is set to begin [hearings on March 20, 2017](#), on the nomination of Judge Neil Gorsuch to fill the vacancy on the Court created by the death of Justice Scalia on February 13, 2016.

Hearings for Supreme Court Nominations Since 1949

Supreme Court nominations from 1949 to 2016 routinely received public confirmation hearings before either the Senate Judiciary Committee or a Judiciary subcommittee (for a discussion of the nature of such hearings prior to 1949, see [CRS Report R44236](#)). From the nomination of [Tom Clark](#) in 1949 through the nomination of [Merrick Garland](#) in 2016, 33 of 37 Supreme Court nominations (or 89%) received hearings.

Of the 33 nominations that received hearings, 28 were approved by the Senate, 3 were rejected in up-or-down votes by the Senate, and 2 were later withdrawn by the President (with one of the two being withdrawn after the Senate failed to invoke cloture on the nomination).

During this same period, as shown by [Table 1](#), there were four nominations that did not receive hearings before the Senate Judiciary Committee. One nomination did not receive a hearing because it was made for the first time by a President less than a month before the final adjournment of the 83rd Congress (the Harlan nomination). Mr. Harlan was renominated at the beginning of the 84th Congress and hearings were held on that nomination.

Another two nominations did not receive hearings because they were withdrawn by the President prior to the scheduled start of confirmation hearings (the Roberts and Miers nominations). Mr. Roberts, however, was renominated for the

Chief Justice position and received hearings for that nomination.

The most recent nomination not to receive a hearing, the nomination of Merrick Garland by President Obama, is the second nomination to the Court since 1949 for which no hearings were scheduled (hearings had been scheduled for the Roberts and Miers nominations prior to both nominations being withdrawn by the President). The Garland nomination is, however, distinct from the nomination of Mr. Harlan in 1954 in that Mr. Harlan's nomination was resubmitted in 1955, hearings were held on that nomination, and Mr. Harlan was subsequently confirmed by the Senate.

Table 1. Supreme Court Nominations That Did Not Receive a Judiciary Committee Hearing
(1949—2016)

Nominee	Nomination Date	Were Hearings Scheduled? What Was Outcome of the Nomination?
		No hearings were scheduled.
John Harlan	Nov. 9, 1954	Nomination not acted upon by the Senate within the 23 days from the nomination being made by President Eisenhower to the adjournment of the 83 rd Congress. ^a
		Hearings scheduled to begin Sep. 6, 2005.
John Roberts, Jr.	Jul. 29, 2005	Nomination withdrawn by President G.W. Bush on Sep. 6, 2005. ^b
		Hearings scheduled to begin Nov. 7, 2005.
Harriet Miers	Oct. 7, 2005	Nomination withdrawn by President G.W. Bush on Oct. 28, 2005.
		No hearings were scheduled.
Merrick Garland	Mar. 16, 2016	Nomination was returned to President Obama on Jan. 3, 2017.

Source: Congressional Research Service

Notes:

a. Mr. Harlan was renominated by President Eisenhower during the 84th Congress on January 10, 1955. For Mr. Harlan's second nomination, he received hearings on Feb. 24-25, 1955. Mr. Harlan was later confirmed.

b. Following the death of Chief Justice Rehnquist on Sept. 3, 2005, Mr. Roberts's nomination for the O'Connor seat was withdrawn and he was renominated on Sept. 6, 2005, for the vacant Chief Justice position. For that particular nomination, hearings began on Sept. 12, 2005. Mr. Roberts was later confirmed.

Time from Nomination to Committee Hearings

Overall, for the 33 Supreme Court nominations from 1949 through 2010 that received a committee hearing (not including the upcoming hearing for Judge Gorsuch), the average number of days from nomination by a President to the commencement of hearings by the Judiciary Committee was 28.8 days. In more recent decades, however, the average has been longer—specifically, since 1975, [the average number of days from nomination to the start of hearings was 39 days](#).

While the average was 28.8 days, there has been variation in the number of days from when a nomination was made by a President to when the Judiciary Committee held hearings on the nomination. Specifically, from 1949 to 2010, the number of days from nomination to the first day of committee hearings ranged from a minimum of 6 days to a maximum of 82 days.

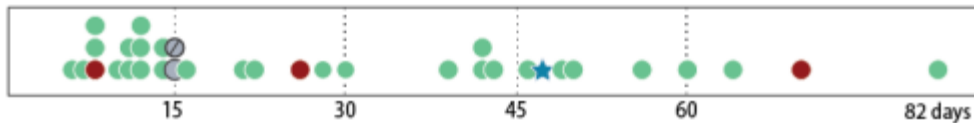
As shown by **Figure 1**, 13 nominations during this period (or 39%) received a committee hearing within two weeks of being made by a President. Another 8 nominations (24%) received a committee hearing from 15 to 30 days of being made by a President.

Of the remaining nominations, 4 (12%) received hearings 31 to 45 days after being made by a President; 5 (15%) had hearings 46 to 60 days after being made; and 3 (9%) nominations had hearings more than 60 days after being made by a President.

The nomination of Judge Gorsuch is not reflected in the statistics above but is included in **Figure 1**. As shown by the figure, the number of days from his nomination to the announced date of his first committee hearing (47 days) is similar to the length of time from nomination to first committee hearing for other recent nominees to the Court (i.e., Justices Sotomayor, Kagan, and Alito).

Figure 1. Number of Days from Date of Nomination to Date of First Committee Hearing
(1949—2017)

Fewer than 15 days 13 Nominations	15 to 30 days 8 Nominations	31 to 45 days 4 Nominations	46 to 60 days 6 Nominations	More than 60 days 3 Nominations
<ul style="list-style-type: none"> ● Roberts (6)^{^*} ● Clark (7) ● Carswell (8) ● Fortas (8) ● White (8) ● Stevens (10) ● Burger (11) ● Goldberg (11) ● Rehnquist (12) ● Powell (12) ● Minton (12) ● Kennedy (14) ● Blackmun (14) 	<ul style="list-style-type: none"> ○ Thornberry (15) ○ Fortas (15)[^] ● Whittaker (16) ● O'Connor (21) ● Warren (22) ● Haynesworth (26) ● Ginsburg (28) ● Marshall (30) 	<ul style="list-style-type: none"> ● Rehnquist (39)[^] ● Sotomayor (42) ● Scalia (42) ● Brennan (43) 	<ul style="list-style-type: none"> ● Harlan (46) ★ Gorsuch (47)^{**} ● Kagan (49) ● Souter (50) ● Breyer (56) ● Alito (60) 	<ul style="list-style-type: none"> ● Thomas (64) ● Bork (70) ● Stewart (82)



Final action on nomination

- Confirmed by Senate 28 nominations
- Rejected by Senate 3 nominations
- Cloture not invoked; later withdrawn by President 1 nomination
- Withdrawn by President 1 nomination
- ★ Currently pending in the Senate 1 nomination

[^] Nominated to Chief Justice position

* John G. Roberts, Jr. had initially been nominated on July 29, 2005, to be an Associate Justice to fill the anticipated vacancy created by the retirement of Sandra Day O'Connor. Committee hearings for Mr. Roberts had been scheduled to begin September 6, 2005—39 days after his nomination to the seat being vacated by Justice O'Connor. Following the death of Chief Justice Rehnquist on September 3, 2005, President G.W. Bush withdrew the Roberts nomination to replace Justice O'Connor and renominated Mr. Roberts for the vacant Chief Justice position on September 6, 2005. For the nomination to be Chief Justice, hearings began 6 days later, on September 12, 2005.

** Based on the announcement by Sen. Grassley, chairman of the Senate Judiciary Committee, that hearings for Judge Gorsuch's nomination to the Supreme Court would begin on March 20, 2017.

Source: Congressional Research Service

Note: The date of nomination used to calculate the numbers reported in **Figure 1** is the date the nomination was formally received in the Senate.