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Supreme Court Nominations, 1789 to 2017: Actions by the Senate, the Judiciary Committee, and the President

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Summary

The process of appointing Supreme Court Justices has undergone changes over two centuries, but its most basic feature, the sharing of power between the President and Senate, has remained unchanged. To receive a lifetime appointment to the Court, a candidate must, under the "Appointments Clause" of the Constitution, first be nominated by the President and then confirmed by the Senate. A key role also has come to be played midway in the process by the Senate Judiciary Committee.

Table 1 of this report lists and describes actions taken by the Senate, the Senate Judiciary Committee, and the President on all Supreme Court nominations, from 1789 through 2017. The table provides the name of each person nominated to the Court and the name of the President making the nomination. It also tracks the dates of formal actions taken, and time elapsing between these actions, by the Senate or Senate Judiciary Committee on each nomination, starting with the date that the Senate received the nomination from the President.

Of the 44 Presidents in the history of the United States, 41 have made nominations to the Supreme Court. They made a total of 162 nominations, of which 125 (more than three-quarters) received Senate confirmation. Also, on 12 occasions in the nation's history, Presidents have made temporary recess appointments to the Court, without first submitting nominations to the Senate. Of the 37 unsuccessful Supreme Court nominations, 11 were rejected in Senate roll-call votes, 11 were withdrawn by the President, and 15 lapsed at the end of a session of Congress. Six individuals whose initial nominations were not confirmed were later renominated and confirmed to positions on the Court.

A total of 119 of the 162 nominations were referred to a Senate committee, with 118 of them to the Judiciary Committee (including almost all nominations since 1868). Prior to 1916, the Judiciary Committee considered these nominations behind closed doors. Since 1946, however, almost all nominees have received public confirmation hearings. Most recent hearings have lasted four or more days.

In recent decades, from the late 1960s to the present, the Judiciary Committee has tended to take more time before starting hearings and casting final votes on Supreme Court nominations than it did previously. The median time taken for the full Senate to take final action on Supreme Court nominations also has increased in recent decades, dwarfing the median time taken on earlier nominations.

This report is current through 2017 and will be updated upon the occasion of the next Supreme Court confirmation.

For additional perspectives on actions taken on Supreme Court nominations, in earlier historical periods as well as in the modern era, see CRS Report R44235, *Supreme Court Appointment Process: President's Selection of a Nominee*; CRS Report R44236, *Supreme Court Appointment Process: Consideration by the Senate Judiciary Committee*; CRS Report R44234, *Supreme Court Appointment Process: Senate Debate and Confirmation Vote*; CRS Report R44773, *The Scalia Vacancy in Historical Context: Frequently Asked Questions*; CRS Insight IN10476, *Senate Judiciary Committee Hearings for Supreme Court Nominations: Historical Overview and Data*; and CRS Report RL33247, *Supreme Court Nominations: Senate Floor Procedure and Practice, 1789-2011*.

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Introduction

The procedure for appointing a Justice to the Supreme Court of the United States is provided for by the Constitution in only a few words. The "Appointments Clause" (Article II, Section 2, clause 2) states that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Judges of the supreme Court." The process of appointing Justices has undergone changes over two centuries, but its most basic feature—the sharing of power between the President and Senate—has remained unchanged. To receive a lifetime appointment to the Court, a candidate must first be nominated by the President and then confirmed by the Senate. An important role also has come to be played midway in the process (after the President selects, but before the Senate considers) by the Senate Judiciary Committee.

On rare occasions, Presidents also have made Supreme Court appointments without the Senate's consent, when the Senate was in recess. Such "recess appointments," however, were temporary, with their terms expiring at the end of the Senate's next session. The last recess appointments to the Court were made in the 1950s.

The need for a Supreme Court nomination arises when a vacancy occurs or is scheduled to occur on the Court.[1] The most recent Court vacancy that has been filled at the time of this writing was created by the death of Justice Antonin Scalia on February 13, 2016. In response, President Barack Obama on March 16, 2016, nominated Merrick B. Garland, a sitting judge on the U.S. Court of Appeals for the District of Columbia, to replace Justice Scalia. It was the 161st time a President of the United States has nominated someone to be a Supreme Court Justice. The Garland nomination, however, was not acted upon by the Senate (receiving neither a committee hearing nor a floor vote) and ultimately was returned to President Obama at the end of the 114th Congress, on January 3, 2017.

Soon thereafter, on February 1, 2017, President Donald J. Trump nominated Neil M. Gorsuch, a sitting judge on the U.S. Court of Appeals for the Tenth Circuit, to fill the Scalia vacancy. The Gorsuch nomination, the 162nd to the Court, received four days of confirmation hearings, after which the Senate Judiciary Committee, on April 3, 2017, by a vote of 11-9, favorably reported the nomination to the Senate. Following three days of floor debate and a 55-45 vote, on April 6, to close debate on the nomination,[2] the Senate, on April 7, confirmed Judge Gorsuch to the Court, by a 54-45 vote.

On June 27, 2018, Justice Anthony M. Kennedy announced his retirement, effective July 31, 2018. This report will be updated upon the confirmation of his successor.

In the past, most, but not all, Supreme Court nominations have received Senate confirmation. From the first appointments in 1789, the Senate has confirmed 125 out of 162 Court nominations.

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[1] A CRS report in March 2017 noted that since President George Washington's initial six appointments to the Supreme Court in 1789 and 1790, "a vacancy on the Court has occurred on average every two years. During the post-War period (1946 to the present), a vacancy on the Court has occurred on average every 2.4 years. In more recent years (since 1980), a vacancy has occurred on average slightly less frequently (every 3.1 years)." CRS Report R44773, *The Scalia Vacancy in Historical Context: Frequently Asked Questions*, by Barry J. McMillion.

[2] On April 6, 2017, a first vote on a motion to close debate on the Gorsuch nomination fell short of the super-majority required under Senate rules—then three-fifths of the Senate's full membership. Immediately thereafter, however, the Senate voted to reinterpret its cloture rule to allow cloture to be invoked on Supreme Court nominations by a simple majority of Senators voting (a quorum being present). The Senate then, pursuant to the rule reinterpretation, voted a second time on the motion to close debate on the nomination, exceeding the simple majority required. *Congressional Record*, daily edition, vol. 163 (April 6, 2017), pp. S2388-S2390.

Of the 37 unsuccessful nominations, 11 were rejected in Senate roll-call votes, while most of the rest, in the face of committee or Senate opposition to the nominee or the President, were withdrawn by the President, or were postponed, tabled, or never voted on by the Senate. The 37 unconfirmed nominations, however, included those of six individuals who were later renominated and confirmed.

Description of Report's Contents

This report lists and describes actions taken by the Senate, the Senate Judiciary Committee, and the President on all Supreme Court nominations, from 1789 to 2017. The listing appears in a Supreme Court nominations table, **Table 1**, later in this report. Preceding the table is summary text, which highlights certain nominations statistics derived from the table. The text also provides historical background information on the Supreme Court appointment process and uses nominations statistics from the table to shed light on ways in which the appointment process has evolved over time. Many of the statistical findings discussed, for example, provide historical perspective on the emergence, and then increased involvement, of the Senate Judiciary Committee in the appointment process.

Specifically, the table lists, for each Supreme Court nomination through 2017, the following:

- name of the person nominated (the nominee);
- name of the President who made the nomination;
- date the nomination was made by the President and received in the Senate;[3]
- date(s) of any committee hearings held on the nomination that were open to the public;
- type and date of final committee action; and
- type and date of final action by the Senate or, in rarer instances, by the President (when the final action taken on a nomination was its withdrawal by the President).

Table 1 also shows the speed with which certain actions were taken on nominations, specifically presenting the number of days that elapsed from the date a nomination was formally received in the Senate until the following:

- the first day of public confirmation hearings (if any);
- the date of final committee action (if any); and
- the date of final Senate action or presidential withdrawal of the nomination.

The table also lists all recess appointments to the Supreme Court, as well as the later nomination of each recess appointee. As well, it identifies five occasions (the earliest in 1968, the latest in 2017) on which motions have been made in the Senate to bring debate on Supreme Court nominations to a close.

[3] Usually the date on which the President formally makes a nomination, by signing a nomination message, is the same as the date on which the nomination is received in the Senate. In **Table 1**, these two dates are the same for any given nomination when only one date is shown in the "Date received in Senate" column. However, for a nomination made by a President on a date prior to the nomination's receipt by the Senate, the earlier presidential nomination date is distinguished, in parentheses, from the date when the nomination was received by the Senate.

Table 1, it should be emphasized, tracks the dates of formal actions taken by the President, the Senate, and the Senate Judiciary Committee on each Supreme Court nomination. The table, for example, records the dates that nominations were actually made and transmitted by the President to the Senate. The table, however, does not track the dates on which Presidents learned of prospective Court vacancies or announced their intention to nominate someone to be a Justice. A discussion focusing more closely on such informal steps in the Supreme Court appointment process can be found in archived CRS Report RL33118, *Speed of Presidential and Senate Actions on Supreme Court Nominations, 1900-2010*. For an analysis of how frequently vacancies have occurred on the Court, or how long they lasted before being filled, see CRS Report R44773, *The Scalia Vacancy in Historical Context: Frequently Asked Questions*.

Actions by the full Senate tracked systematically in **Table 1** are those on which the Senate took *final* action (ordinarily in the form of confirmation, and less often in the form of rejecting, tabling, or postponing action on a nomination). For certain Supreme Court nominations, **Table 1** also provides dates of procedural actions taken on the Senate floor, prior to or after final Senate action, in order to put the final action in fuller context. The table, however, does not account for all Senate procedural actions on, or for all dates of Senate floor consideration of, Supreme Court nominations. For more comprehensive information on procedural actions taken by the full Senate on past Supreme Court nominations, see CRS Report RL33247, *Supreme Court Nominations: Senate Floor Procedure and Practice, 1789-2011*.

In listing all persons ever nominated to the Supreme Court, **Table 1** includes the names of those who were not confirmed as well as those who were confirmed but did not assume their appointive office.[4] A list solely of the 112 individuals who assumed office and served on the Court (with judicial oath dates and service termination dates for each Justice) is available on the Court's website.[5]

Findings from the Nominations Table

Number of Nominations and Nominees

Table 1 lists all 162 Supreme Court nominations from 1789 to 2017. Each of the 162 nominations entailed a President signing a nomination message, which was then transmitted to, and received by, the Senate. A lesser number of separate individuals, 143, were actually nominated to the Court, with some of them nominated more than once.[6]

[4] **Table 1** identifies eight Supreme Court nominees who subsequent to Senate confirmation did not assume the office to which they had been appointed: Seven declined the office, and one died before assuming it. It should be noted, however, that one of the seven who declined the office, William Cushing—confirmed to be Chief Justice in 1796—was at the time serving on the Court as an Associate Justice, and continued to serve in that capacity until 1810. Another of the seven, John Jay—confirmed to be Chief Justice in 1800—had served earlier on the Court, as the Court's first Chief Justice, from 1789 to 1795.

[5] The list, available at http://www.supremecourt.gov/about/members_text.aspx, presents first the names of 17 persons who have served as Chief Justice, followed by the 101 persons who have served as Associate Justices. The listing of 118 names in all (17 + 101) includes those of five Chief Justices who earlier had served as Associate Justices, hence reducing to 113 the total number of persons who have served as members of the Court.

[6] Specifically, eight persons were nominated twice to the same Court position (seven to be Associate Justice, one to be Chief Justice); one person was nominated three times to be Associate Justice; and nine persons were nominated first to be Associate Justice and later to be Chief Justice. The sum of 19 (the number of Court nominations that were not a person's first nomination to the Court) and 143 (the number of persons nominated to the Court at least once) is 162 (total Supreme Court nominations).

Of the 162 total nominations to the Court, 22 were to the position of Chief Justice and the other 140 to a position as Associate Justice. The 22 Chief Justice nominations involved 20 persons nominated once, and one person nominated twice.[7] The 140 Associate Justice nominations involved 123 persons nominated once, 7 persons nominated twice, and 1 person nominated three times.

Presidents Who Made the Nominations

Of the 44 Presidents in the history of the United States, 41 have made nominations to the Supreme Court.[8] These 41 are listed in the second column of **Table 1**. All but one of the 41 Presidents succeeded in having at least one Supreme Court nomination receive Senate confirmation. The one exception was President Andrew Johnson, whose only Court nomination, of Henry Stanbery in 1866, was thwarted when the Senate enacted legislation eliminating the Associate Justice position to which Stanbery had been nominated.[9]

As **Table 1** shows, the number of nominations made to the Supreme Court has varied greatly from President to President. For any given President, the number of nominations will be affected by various factors, including the length of time the President was in office, the number of vacancies occurring on the Court during that presidency, and whether more than one nomination was required to fill a Court vacancy due to a previous nomination's failure to be confirmed. Examination of the nominations to the Court for each President reveals that slightly less than half of the Presidents (21 of 44) made four or more nominations, while slightly more than half (23 of 44) made three or fewer. Likewise, slightly less than half of the Presidents (again, 21 of 44) saw three or more of their Court nominations confirmed, while slightly more than half (again, 23 of 44) saw two or fewer confirmed.

The President with the most Supreme Court nominations and confirmations was George Washington with 14 nominations, 12 of which were confirmed.[10] The two Presidents with the

[7] The nation's first Chief Justice, John Jay, was nominated to that position twice. Jay was first nominated, and confirmed, in September 1789. He resigned as Chief Justice in 1795 to serve as governor of New York. In December 1800, Jay was nominated and confirmed a second time as Chief Justice, but declined the appointment. For analysis of the process by which a Chief Justice is appointed, accompanied by a list of all Chief Justice nominations from 1789 to the present (including the nomination, confirmation, judicial oath, and end-of-service dates of Chief Justice nominees, as well as their ages at time of appointment and upon termination of service), see archived CRS Report RL32821, *The Chief Justice of the United States: Responsibilities of the Office and Process for Appointment*, by Denis Steven Rutkus and Lorraine H. Tong.

[8] The three Presidents not to have made any Supreme Court nominations were William Henry Harrison, Zachary Taylor, and Jimmy Carter, with no Court vacancies having occurred while they were in office. See "Table 3. Supreme Court Nominations, by President, 1789 to 2008," in CRS Report RL31171, *Supreme Court Nominations Not Confirmed, 1789-August 2010*, by Henry B. Hogue, which lists the number of vacancies on the Court that existed during each presidency, from George Washington to George W. Bush. While it is unremarkable that no vacancies occurred during the short-lived presidencies of Harrison (March 4 to April 4, 1841) and Taylor (March 5, 1849 to July 9, 1850), Jimmy Carter's presidency (January 20, 1977 to January 20, 1981) is remarkable as the only one lasting a full term during which no Supreme Court vacancies occurred.

[9] See Myron Jacobstein and Roy M. Mersky, *The Rejected* (Milpitas, CA: Toucan Valley Publications, 1993), pp. 69-74. (Hereinafter cited as Jacobstein and Mersky, *The Rejected*.)

[10] President Washington, early in his first term of office, was presented with the opportunity to make six Supreme Court nominations, as the Judiciary Act of 1789 (1 Stat. 73 (1789)) set the number of Justice positions on the newly established Court at six. On September 24, 1789, the President nominated six persons to the Court, and two days later the Senate voted for their confirmation. However, one of the confirmed nominees, Robert Harrison of Maryland, declined the appointment, resulting in President Washington, in 1790, making a seventh nomination, of James Iredell of North Carolina, whose confirmation by the Senate put the six-member Court at full strength. Subsequently during the Washington presidency, four vacancies occurred on the Court, which resulted in the President making seven more (continued...)

second-largest number of Court nominations were John Tyler and Franklin D. Roosevelt, with nine each. Only one of Tyler's nine nominations, however, received Senate confirmation, while all nine of FDR's were confirmed. The President with the largest number of Supreme Court confirmations in one term (apart from the first eight of George Washington's nominations—all in his first term, and all confirmed) was William Howard Taft, who, during his four years in office, made six Court nominations, all of which were confirmed. Seven Presidents made only one Supreme Court nomination each, with the nominations of six of these Presidents receiving confirmation.[11] And, as noted above, three of the nation's 44 Presidents were unable to make a single nomination to the Court, because no vacancies occurred on the Court during their presidencies.

Date That Nominations Were Received in Senate

The Supreme Court appointment process officially begins when the President signs a message to the Senate nominating someone for appointment to the Court. Usually on the date of the signing, the message is delivered to the Senate and recorded in the *Senate Executive Journal* as having been received that day.[12] However, in 31 instances (all but two prior to the 20th century), Supreme Court messages were recorded in the *Senate Executive Journal* as received in the Senate on a day after they were signed by the President—usually the next day. In **Table 1**, in the "Date received in Senate" column, a second date is provided in parentheses (as the "Nom. date"), whenever a President made a nomination on a day prior to its receipt by the Senate.

Referral of Nominations to Senate Judiciary Committee

Although referral of Supreme Court nominations to the Senate Judiciary Committee is now standard practice, such referrals were not always the case. **Table 1** shows that 119 of 162 Supreme Court nominations have been referred to a Senate committee, 118 of them to the Judiciary Committee.

The first standing legislative committees of the Senate, including the Judiciary Committee, were created in 1816. Only once previously was a Supreme Court nomination referred to committee, when, in 1811, the Senate referred the nomination of Alexander Wolcott to a select committee of three Members. For roughly half a century after the Judiciary Committee's creation, nominations, rather than being automatically referred to the committee, were referred by motion only. From

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nominations. Four of these seven nominations were confirmed by the Senate, with the nominees accepting their appointments to the Court. The other three nominations involved the first of two nominations of William Paterson of New Jersey in 1793 (who, after his first nomination was withdrawn, was renominated by President Washington and confirmed), John Rutledge of South Carolina (whose nomination in 1795 to be Chief Justice was rejected by the Senate), and William Cushing of Massachusetts (whose nomination in 1796 to be Chief Justice was confirmed by the Senate, but who declined the appointment).

[11] The six Presidents whose single Supreme Court nominations received Senate confirmation were Franklin Pierce, James A. Garfield, William McKinley, Calvin Coolidge, Gerald R. Ford, and (to date) Donald J. Trump. As mentioned above, the one President whose single Supreme Court nomination did not receive confirmation was Andrew Johnson.

[12] A President may announce the selection of a nominee well before transmitting a nomination message to the Senate. For instance, President George W. Bush announced his selection of Samuel A. Alito Jr. to be a Supreme Court nominee on October 31, 2005, but formally signed and transmitted the nomination of Alito to the Senate on November 10, 2005. For a complete list, from 1900 to 2009, of the dates on which Presidents announced their Supreme Court nominees (as distinguished from when they signed and transmitted nomination documents to the Senate), see archived CRS Report RL33118, *Speed of Presidential and Senate Actions on Supreme Court Nominations, 1900-2010*, by R. Sam Garrett and Denis Steven Rutkus.

1816 to 1868, more than two-thirds of the nominations (26 out of 38 nominations), were referred to the committee. During this period, the confirmation success rate was roughly the same for nominations referred, 15 of 26, as it was for those not referred, 7 out of 12.

In 1868, Senate rules were changed to provide that all nominations be referred to appropriate standing committees, unless otherwise ordered by the Senate.[13] Subsequently, from 1868 to the present day, 92 of 98 Supreme Court nominations have been referred to the Judiciary Committee. The six nominations not referred to committee were of persons who, at the time of their nomination, were a former President, a Senator, a former Senator, an Attorney General and former U.S. Representative, a former Secretary of War, or a sitting Associate Justice,[14] and all were easily confirmed. The last Supreme Court nomination not referred to the Judiciary Committee was that of Senator James F. Byrnes in 1941. The Senate by unanimous consent considered and confirmed the Byrnes nomination, without referral to committee, on the day it received the nomination from the President.

Nominations That Received Public Confirmation Hearings[15]

Table 1, in the "Public hearing date(s)" column, lists dates on which the full Judiciary Committee, or a Judiciary subcommittee, held public confirmation hearings on Supreme Court nominations. Included in this listing are public sessions of the committee at which either Supreme Court nominees testified on their own behalf and/or outside witnesses testified for or against the nominees.

Advent of Public Hearings

Before 1916, the Judiciary Committee considered Supreme Court nominations behind closed doors. Thus, until that year, there are no entries in the "Public hearing date(s)" column. Rather, committee sessions on Court nominations typically were limited to committee members discussing and voting on a nominee in executive session, without hearing testimony from outside witnesses.[16] In 1916, for the first time, the committee held open confirmation hearings on a

[13] See U.S. Congress, Senate Committee on the Judiciary, *History of the Committee on the Judiciary, United States Senate, 1816-1981*. Sen. Doc. No. 97-18, 97th Cong., 1st sess. (Washington: GPO, 1982), p. iv; also, U.S. Senate, *History of the Committee on Rules and Administration—United States Senate*, prepared by Floyd M. Riddick, Parliamentarian Emeritus of the Senate, 96th Cong., 1st sess., S. Doc. No. 96-27 (Washington: GPO, 1980). Riddick provides, on pp. 21-28, the full text of the general revision of the Senate rules, adopted in 1868, including, on p. 26, the following rule: "When nominations shall be made by the President of the United States to the Senate, they shall, unless otherwise ordered by the Senate, be referred to appropriate committees.... "

[14] The nominations from 1868 to the present not referred to the Judiciary Committee were those of: Edwin M. Stanton in 1869 (at time of nomination, former Secretary of War); Edward D. White in 1894 (Senator); Edward D. White again, in 1910, this time to be Chief Justice (Associate Justice at time of nomination, and former Senator); William Howard Taft in 1921 (former President); George Sutherland in 1922 (former Senator); and James F. Byrnes in 1941 (Senator).

[15] For a historical overview of public hearings on Supreme Court nominations submitted to the Senate, see CRS Insight IN10476, *Senate Judiciary Committee Hearings for Supreme Court Nominations: Historical Overview and Data*, by Barry J. McMillion.

[16] At least once in the 19th century, however, in 1873, the Judiciary Committee did hear witnesses testify concerning a Supreme Court nomination—that of George H. Williams to be Chief Justice—but these two days of hearings, on December 16 and 17, 1873, were held in closed session. The closed-door sessions were held to examine documents and hear testimony from witnesses relevant to a controversy that arose over the Williams nomination only after the committee had reported the nomination to the Senate. The controversy prompted the Senate to recommit the nomination to the Judiciary Committee and to authorize the committee "to send for persons and papers." U.S. Congress, Senate, *Journal of the Executive Proceedings of the Senate of the United States of America*, vol. 19 (Washington: GPO, 1901), p. 189. After holding the two closed-door sessions on December 16 and 17, the committee (continued...)

Supreme Court nomination—that of Louis D. Brandeis to be an Associate Justice—at which outside witnesses (but not the nominee) testified. More days of public hearings (19) were held on the Brandeis nomination than on any Supreme Court nomination since. The Brandeis hearings, however, did not set immediately into place a new policy of open confirmation hearings for Supreme Court nominations, since each of the next six nominations (during the years 1916 to 1923) was either considered directly by the Senate, without referral to the Judiciary Committee, or was acted on by the committee without the holding of confirmation hearings.

From 1925 to 1946, public confirmation hearings for Supreme Court nominations became the more common, if not invariable, practice of the Judiciary Committee. In 1925, Harlan F. Stone became the first Supreme Court nominee to appear in person and testify at his confirmation hearings.[17] During the next two decades, the Stone nomination was one of 11 Court nominations that received public confirmation hearings before either the full Judiciary Committee or a Judiciary subcommittee,[18] while five other nominations did not receive public hearings. One of the five nominees not receiving a public confirmation hearing was Senator James F. Byrnes, whose nomination in 1941, as noted earlier, was considered directly by the Senate without referral to the Judiciary Committee.[19]

Not indicated in the "Public hearing date(s)"column is the precise length (in minutes or hours) of each public hearing session. The hearing sessions for a few Supreme Court nominations during the 1925 to 1946 period lasted for hours, extending over several days;[20] others, however, were brief and perfunctory in nature, held only long enough to accommodate the small number of witnesses who wished to testify against a nominee.[21]

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did not re-report the nomination to the Senate. Amid press reports of significant opposition to the nomination both in the Judiciary Committee and the Senate as a whole, the nomination, at Williams's request, was withdrawn by President Ulysses S. Grant on January 8, 1874. See Jacobstein and Mersky, *The Rejected*, pp. 82-87.

[17] For a discussion of the advent of Supreme Court nominee appearances before the Senate Judiciary Committee, starting with Harlan F. Stone in 1925 (and carrying through the nominations of Abe Fortas and Homer Thornberry in 1968), see, James A. Thorpe, "The Appearance of Supreme Court Nominees Before the Senate Judiciary Committee," *Journal of Public Law*, vol. 18, 1969, pp. 371-402.

[18] A scholar examining the procedures followed by the committee in its consideration of 15 Supreme Court nominations referred to it between 1923 and 1946 found that, with two exceptions—the nominations of Charles Evans Hughes in 1930 and Harold H. Burton to be Associate Justices in 1945—all of the nominations were first "processed by a subcommittee prior to consideration by the full committee membership." David Gregg Farrelly, "Operational Aspects of the Senate Judiciary Committee," (Ph.D. diss., Princeton University: 1949), pp. 184-185. (Hereinafter cited as Farrelly, "Operational Aspects.")

[19] The four other nominations not receiving public confirmation hearings even though referred to the Judiciary Committee were of former New York governor and former Supreme Court Associate Justice Charles Evans Hughes in 1930, former federal prosecutor Owen J. Roberts in 1930, Senator Hugo L. Black in 1937, and Senator Harold H. Burton in 1945.

Farrelly, in "Operational Aspects," also lists the Supreme Court nomination of former Michigan governor Frank Murphy in 1940 as one not receiving a confirmation hearing. Farrelly notes, at pp. 191-192, that the Senate Judiciary subcommittee which first processed the nomination "voted against public hearings." That vote notwithstanding, the nominee voluntarily appeared before the subcommittee on January 11, 1940, in a public session at which four Senators "all questioned Mr. Murphy about his views of the Constitution and the duties of a Supreme Court Justice." "Senate Body Backs Murphy for Court," *New York Times*, January 12, 1940, p. 1. Based on this and other similar newspaper accounts of the subcommittee session, January 11, 1940 is listed below, in **Table 1,** as a public hearing date for the Murphy nomination.

[20] See, in **Table 1**, the multiple hearing days for the nominations of Felix Frankfurter in 1939 and Robert H. Jackson in 1941.

[21] For example, a Judiciary subcommittee hearing on the 1932 nomination of Benjamin N. Cardozo lasted only five (continued...)

From Tom C. Clark's appointment in 1949 through the nomination of Neil M. Gorsuch in 2017, all but 4 of 38 Supreme Court nominations have received public confirmation hearings before the Senate Judiciary Committee or a Judiciary subcommittee.[22] The first of the four exceptions involved the 1954 nomination of John M. Harlan II, made less than a month before the final adjournment of a Congress. At the beginning of the next Congress, however, Harlan was renominated, and hearings were held on that nomination.[23] The second and third exceptions involved the Associate Justice nominations of John G. Roberts Jr. and Harriet E. Miers in 2005, both of which were withdrawn by the President before the scheduled start of confirmation hearings. Roberts, however, was renominated, this time to be Chief Justice, and hearings were held on that nomination. The fourth and most recent exception, in the presidential election year of 2016, involved the nomination of Merrick B. Garland. No hearings were held on the nomination after the Senate majority leader and chairman of the Senate Judiciary Committee both took the position that the person to fill the Scalia vacancy be one selected by the next President taking office on January 20, 2017.[24]

Length of Hearings in Days

The number of days given to public confirmation hearings has varied greatly from one Supreme Court nomination to another, particularly in recent decades. Following the 19 days of hearings held on the Brandeis nomination in 1916, Court nominations through the Associate Justice nomination of Abe Fortas in 1965 typically received either one or two days of hearings. However, from 1967 through the present, 18 of the 24 Court nominations which advanced through the hearings stage received four or more days of open confirmation hearings. Four of the 18 nominations received 11 or more days of hearings,[25] while another received eight days of

(...continued)

minutes, during which one witness testified in opposition. Likewise, when the Judiciary Committee extended open invitations for witnesses to testify in opposition at the confirmation hearings for Stanley F. Reed in 1938, William O. Douglas in 1939, Harlan F. Stone (for Chief Justice) in 1941, Wiley B. Rutledge in 1943, and Fred M.Vinson (for Chief Justice) in 1946, no witnesses appeared to protest against Douglas or Stone, and "only one or two persons filed protests in each case against Reed, Vinson and Rutledge." Farrelly, "Operational Aspects," pp. 194-195.

[22] The last Supreme Court nomination on which a Senate Judiciary subcommittee held hearings was the 1954 nomination of Earl Warren to be Chief Justice. The subcommittee held public hearings on the nomination on February 2 and 19, 1954, after which the full committee, on February 24, 1954, voted to report the nomination favorably. All subsequent hearings on Supreme Court nominations were held by the full Judiciary Committee.

[23] The Judiciary Committee held two days of confirmation hearings on the second Harlan nomination, on February 24 and 25, 1955. The February 24 session, held in *closed* session, heard the testimony of nine witnesses (seven in favor of confirmation, and two opposed). Luther A. Huston, "Harlan Hearing Held by Senators," *New York Times*, February 25, 1955, p. 8. The committee also began the February 25 hearing in closed session, to hear the testimony of additional witnesses. However, for Judge Harlan, who was the last scheduled witness, the committee "voted to open the hearing to newspaper reporters for his testimony." Luther A. Huston, "Harlan Disavows 'One World' Aims in Senate Inquiry," *New York Times*, February 26, 1955, p. 1.

[24] See CRS Report R44773, *The Scalia Vacancy in Historical Context: Frequently Asked Questions*, by Barry J. McMillion. See also letter by majority members of the Senate Judiciary Committee to the Senate majority leader expressing unanimous agreement that there be no hearings on any Supreme Court nominee until after the next President was sworn in on January 20, 2017, at https://www.grassley.senate.gov/news/news-releases/judiciary-committee-republicans-mcconnell-no-hearings-supreme-court-nomination; also, Dave Boyer, "Grassley Reiterates No Hearing Stance in Garland Meeting," *The Washington Times*, April 13, 2016, p. A5.

[25] These were the nominations of Robert H. Bork in 1987 (12 hearing days), Clarence Thomas in 1991 (11 days), and Abe Fortas and Homer Thornberry in 1968 (11 days for their joint hearings).

hearings.[26] By contrast, only three of the 24 nominations received two or fewer days of hearings.[27]

Nominations Reported Out of Committee to Full Senate

Supreme Court nominations referred to the Judiciary Committee have almost always subsequently been reported to the Senate. If a majority of its members oppose confirmation of a Supreme Court nominee, the committee technically may vote against reporting the nomination (although **Table 1** shows no instances of the committee ever doing this). The committee might also simply decide not to consider or vote on a nomination. Failure to report would prevent the full Senate from considering the nominee, unless the Senate were able to undertake successfully the discharge of the committee. **Table 1**, however, shows that instances of the committee not reporting have been rare. Of the 118 Supreme Court nominations referred to the Judiciary Committee, 109 were reported to the Senate.[28] The committee has reported these nominations in the following four ways.

Reporting

For most of the first five decades in which the Judiciary Committee considered Supreme Court nominations (1828 to 1863), its usual practice was simply to report these nominations to the Senate, without any official indication of the committee members' opinions regarding them. Twenty-three nominations were reported to the Senate in this way, and 15 of them were confirmed.

Reporting with a Favorable Recommendation

In 1870, the Judiciary Committee initiated the practice of reporting to the Senate an explicit recommendation in favor of confirmation whenever a majority of members supported a Supreme Court nominee. Over the course of almost a century and a half, the committee has favorably reported 75 Supreme Court nominations, with 69 receiving Senate confirmation.[29]

Reporting Without Recommendation

On four occasions—three times in the late 19th century and once in the late 20th century—the Judiciary Committee has voted to report a Supreme Court nomination while explicitly stating it was not making a recommendation to the Senate. On each occasion, the committee reported a

[26] In 1969, eight days of confirmation hearings were held on the nomination of Clement F. Haynsworth.

[27] One day of hearings each was held on the nominations of Warren E. Burger (to be Chief Justice) in 1969 and Harry A. Blackmun in 1970, while two days of hearings were held on the nomination of Antonin Scalia in 1986.

[28] As noted earlier, only once prior to the establishment of the Judiciary Committee in 1816 was a Supreme Court nomination referred to committee, and that nomination was reported to the Senate as well. See, in **Table 1**, the nomination in 1811 of Alexander Wolcott, which was considered by a select committee and then reported to the Senate, where it was rejected by a 9-24 vote.

[29] The six favorably reported nominations which failed to receive Senate confirmation involved these nominees: George H. Williams, for Chief Justice, in 1873 (nomination withdrawn); Caleb Cushing, in 1874 (nomination withdrawn); Pierce Butler in 1922 (no action taken by Senate); Abe Fortas, for Chief Justice, in 1968 (nomination withdrawn); Clement F. Haynsworth Jr. in 1969 (rejected by Senate); and G. Harrold Carswell in 1970 (rejected by Senate). Butler, it should be noted, was renominated and confirmed.

nomination without urging the Senate either to confirm or to reject.[30] The Senate confirmed three of the nominations that were reported in this way, while rejecting the fourth.[31]

Reporting with an Unfavorable Recommendation

On seven occasions—five times in the 19th century and twice in the 20th century—the Judiciary Committee voted to report a Supreme Court nomination with a recommendation to the Senate that it reject the nomination. Only two of the seven nominations received Senate confirmation (and each only by a close roll-call vote);[32] the Senate rejected four of the others[33] and postponed taking action on the fifth.[34]

Nominations Not Reported Out of Committee

Of the 118 Supreme Court nominations referred to the Judiciary Committee since its establishment, 9 were not reported by the committee to the Senate. Although six of the nominees were never confirmed to the Court,[35] the other three ultimately were, after being renominated.[36]

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[30] A report that states it is not accompanied by a recommendation can be a way to alert the Senate that a substantial number of committee members have some reservations about the nominee which, however, do not rise, at that point, to the level of opposition; it might also be a way to bridge or downplay differences between committee members who favor confirmation and other members who oppose it. The latter, for example, was said to be the purpose for the Judiciary Committee in 1888 reporting the Chief Justice nomination of Melville W. Fuller without recommendation; the action was described in a news account as a "compromise between the Democratic minority who desired a report to the Senate in favor of confirmation, and the Republican majority, who desired to defeat the nomination .... " "Mr. Fuller's Nomination," *Washington Post,* July 3, 1888, p. 1.

[31] The three nominees confirmed by the Senate after the Judiciary Committee explicitly reported their nominations without recommendation were: Melville W. Fuller, for Chief Justice, in 1888; George Shiras Jr. in 1892; and Clarence Thomas in 1991. A fourth nomination reported without recommendation, Wheeler H. Peckham, in 1894, was rejected by the Senate.

[32] See, in **Table 1,** the second nomination of Stanley Matthews in 1881 (confirmed 24-23) and the nomination of Lucius Q. C. Lamar in 1888 (confirmed 32-28).

[33] The nominations reported unfavorably and then rejected by the Senate involved these nominees: Ebenezer R. Hoar in 1869 (rejected 24-33); William B. Hornblower in 1894 (rejected 24-30); John J. Parker in 1930 (rejected 39-41); and Robert H. Bork in 1987 (rejected 42-58).

[34] The Senate in 1829 postponed taking action on the nomination of John Crittenden after receiving an adverse report on the nomination from the Judiciary Committee.

[35] The final outcome for five of these six nominees, however, was determined not by the failure of their nominations to be reported out of committee, but by action, or lack of action, taken outside the committee—by the Senate, Congress as a whole, or the President. In 1853, the nomination of William C. Micou was referred to the Judiciary Committee and on the same day ordered discharged by the Senate, where no action was taken. In 1866, the nomination of Henry Stanbery was referred to the Judiciary Committee, but shortly afterwards, while the nomination was pending in the Senate, the Associate Justice position to which Stanbery had been nominated was eliminated by statute. In 1893, the nomination of William B. Hornblower was referred to the Judiciary Committee, but not reported; later that year, in a new session of Congress, Hornblower was renominated, reported unfavorably by the Judiciary Committee (in early 1894), and rejected by the Senate, 24-30. In 1968, the Judiciary Committee declined to report the nomination of Homer Thornberry to succeed Associate Justice Abe Fortas until the final outcome of the nomination of Fortas to be Chief Justice was determined. The Thornberry and Fortas nominations were both withdrawn by the President after a motion to close debate on the Fortas nomination failed to pass in the Senate. (The failure of Fortas's Chief Justice nomination eliminated the prospective Associate Justice vacancy that Thornberry had been nominated to fill.) In 2005, the nomination of Harriet E. Miers was withdrawn by the President before the Judiciary Committee held hearings on the nomination. By contrast, the failure to be confirmed of a sixth unreported nominee, Merrick B. Garland in 2016, could be seen as attributable in significant part to the Judiciary Committee not considering or acting on the Garland nomination.

[36] In February 1881, just before the final adjournment of the 46th Congress, the Judiciary Committee voted to postpone (continued...)

Senate Cloture Votes on Nominations

When a Supreme Court nomination is under Senate consideration, supporters of the nomination have available to them, under Senate rules, a procedure for placing a time limit on its further consideration. This procedure is the motion to invoke cloture.[37] A cloture motion filed on a nomination receives a vote after two days of Senate session. If the Senate agrees to the motion, further consideration of the nomination is limited to 30 hours.[38]

Over the last half century, the Senate has required different kinds of majorities to invoke cloture on nominations in general, including Supreme Court nominations.[39] Prior to 1975, the majority required was two-thirds of Senators present and voting, a quorum being present.[40] Thereafter, until 2017, ending consideration of Supreme Court nominations required a vote of three-fifths of Senators duly chosen and sworn (60 Senators unless there was more than one vacancy).[41] The cloture threshold for Supreme Court nominations changed again on April 6, 2017, when the Senate reinterpreted its Rule XXII, to allow a simple majority of Senators voting, a quorum being present, to invoke cloture. (The new rule interpretation applied to Court nominations the same majority cloture threshold requirement that the Senate, in a 2013 precedent, had applied to all other nominations.)[42]

As indicated in **Table 1,** motions to bring debate on Supreme Court nominations to a close have been made on five occasions:

- The first use occurred in 1968, when Senate supporters of Justice Abe Fortas tried unsuccessfully to end debate on the motion to proceed to his nomination to be Chief Justice. After the motion was debated at length, the Senate failed to

(...continued)

taking action on the Supreme Court nomination of Stanley Matthews; shortly afterwards, however, in a special session of the 47th Congress, Matthews was renominated, and, although his second nomination was reported unfavorably by the Judiciary Committee, it was confirmed by the Senate, 24-23. In November 1954, late in the 83rd Congress, the nomination of John M. Harlan II was referred to the Judiciary Committee, where no action was taken; in 1955, Harlan was renominated, considered and reported favorably by the Judiciary Committee, and confirmed by the Senate. In September 2005, before the scheduled start of confirmation hearings, the nomination of John G. Roberts Jr. to be Associate Justice was withdrawn and, on the same day of the withdrawal, Roberts was renominated for Chief Justice; the second Roberts nomination was reported favorably by the Judiciary Committee and confirmed by the Senate.

[37] See CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki; also, CRS Report RL30360, *Filibusters and Cloture in the Senate*, by Valerie Heitshusen and Richard S. Beth.

[38] Ibid.

[39] It has only been since 1949, under Senate rules, that cloture could be moved on nominations. Prior to 1949, dating back to the Senate's first adoption of a cloture rule in 1917, cloture motions could be filed only on legislative measures. See CRS Report RL32878, *Cloture Attempts on Nominations: Data and Historical Development*, by Richard S. Beth.

[40] Ibid.

[41] Ibid.

[42] See CRS Report R44819, *Senate Proceedings Establishing Majority Cloture for Supreme Court Nominations: In Brief*, by Valerie Heitshusen. The action was similar to that taken in November 2013, when the Senate had reinterpreted the cloture rule to allow a simple majority vote to invoke cloture on all nominations except to the Supreme Court. See CRS Report R43331, *Majority Cloture for Nominations: Implications and the "Nuclear" Proceedings of November 21, 2013*, by Valerie Heitshusen.

invoke cloture by a 45-43 vote,[43] prompting President Johnson to withdraw the nomination.[44]

- A cloture motion to end debate on a Court nomination occurred again in 1971, when the Senate considered the nomination of William H. Rehnquist to be an Associate Justice. Although the cloture motion failed by a 52-42 vote,[45] Rehnquist was confirmed later the same day.[46]
- In 1986, a cloture motion was filed on a third Supreme Court nomination, this time of sitting Associate Justice Rehnquist to be Chief Justice. Supporters of the nomination mustered more than the three-fifths majority needed to end debate (with the Senate voting for cloture 68-31),[47] and Justice Rehnquist subsequently was confirmed as Chief Justice.
- A cloture motion was presented to end consideration of a Supreme Court nomination a fourth time, during Senate debate on the nomination of Samuel A. Alito Jr. in January 2006. The motion was presented on January 26, after two days of Senate floor debate.[48] On January 30, the Senate voted to invoke cloture by a 72-25 vote,[49] and the next day it confirmed the Alito nomination by a vote of 58-42.
- In 2017, the Senate voted on a fifth occasion on whether to close debate on a Supreme Court nomination, in a series of procedural votes involving the Associate Justice nomination of Neil M. Gorsuch.[50] On April 6, 2017, a 55-45 vote on a motion to close debate on the nomination fell short of the super-majority required under Senate rules—then three-fifths of the Senate's full membership.[51] Immediately thereafter, however, the Senate voted to reinterpret its cloture rule to allow cloture to be invoked on Supreme Court nominations by a simple majority of Senators voting (a quorum being present).[52] The Senate then, pursuant to the rule reinterpretation, voted a second time on the motion to close

[43] For the Senate's debate on the Fortas nomination immediately prior to the vote on the motion to close debate, see "Supreme Court of the United States," *Congressional Record*, vol. 114, October 1, 1968, pp. 28926-28933.

[44] The 45 votes in favor of cloture fell far short of the super-majority required—then two-thirds of Senators present and voting, a quorum being present.

[45] For the Senate's debate on the Rehnquist nomination immediately prior to the vote on the motion to close debate, see "Cloture Motion," *Congressional Record*, vol. 117, December 10, 1971, pp. 46110-46117.

[46] The Senate, on December 10, 1971, confirmed the Rehnquist nomination by a vote of 68-26, after voting 22-70 to reject a motion that a vote on the nomination be deferred until January 18, 1972. *Congressional Record*, vol. 117, December 10, 1971, p. 46121 (vote on motion to defer) and p. 46197 (confirmation vote).

[47] "Nomination of William H. Rehnquist To Be Chief Justice of the United States," *Congressional Record*, vol. 132, September17, 1986, pp. 23729-23739.

[48] "Cloture Motion," *Congressional Record*, January 26, 2006, daily edition, vol. 152, p. S197.

[49] "Nomination of Samuel A. Alito, Jr., To Be an Associate Justice of the Supreme Court of the United States," *Congressional Record*, January 30, 2006, daily edition, vol. 152, pp. S260-S308.

[50] See *Congressional Record*, April 6, 2017, daily edition, vol. 163, pp. S2388-S2390.

[51] Ibid.

[52] The Senate established the new precedent, when, by a 48-52 vote, it overturned a ruling of the chair that a 2013 precedent that applied a majority vote cloture threshold to executive branch and lower court nominations did not apply to Supreme Court nominations. For a brief report explaining the Senate's April 6, 2017 actions (by which the Senate effectively extended to Supreme court nominations its November 2013 reinterpretation of Senate Rule XXII), see CRS Report R44819, *Senate Proceedings Establishing Majority Cloture for Supreme Court Nominations: In Brief*, by Valerie Heitshusen

debate on the nomination, again by a 55-45 vote, which this time exceeded the majority required (now a simple majority).[53] The next day, the Senate confirmed the Gorsuch nomination by a vote of 54-45.

Final Action by the Senate or the President

From the first Supreme Court appointments in 1789 to 2017, Presidents have made 162 nominations to the Court. **Table 1** shows, in the "Final action by Senate or President" column, that the Senate confirmed 125 of these nominations, or roughly three-fourths.[54] Of the 37 nominations that were not confirmed, 11 were rejected by the Senate (all in roll-call votes),[55] 11 were withdrawn by the President,[56] and 15 lapsed at the end of a session of Congress without a Senate vote cast on whether to confirm.[57] The 37 nominations not confirmed by the Senate represented 32 individuals, some of whom were nominated more than once.[58] Six individuals whose initial nominations were not confirmed were later renominated and confirmed for positions on the Court.[59]

[53] Ibid.

[54] The exact confirmation percentage is 77.1%, reached by dividing 125 confirmations by 162 nominations.

[55] The earliest Senate rejection of a Supreme Court nomination occurred in 1795, when President George Washington's nomination of John Rutledge to be Chief Justice failed on a 10-14 vote. The latest instance was the Senate's rejection of Robert H. Bork in 1987, by a 42-58 vote. Between Rutledge and Bork, the following nominations were also rejected: Alexander Wolcott in 1811, John C. Spencer in 1844, George W. Woodward in 1846, Ebenezer R. Hoar in 1870, William B. Hornblower in 1894, Wheeler H. Peckham in 1894, John J. Parker in 1930, Clement F. Haynsworth Jr. in 1969, and G. Harrold Carswell in 1970.

[56] The following Supreme Court nominations were withdrawn, in the years indicated, with the Presidents who withdrew them shown in parentheses: The first nomination of William Paterson, in 1793 (George Washington); the first nomination of Reuben H. Walworth, in 1844 (John Tyler); the second nomination of John C. Spencer, in 1844 (John Tyler); the third nomination of Reuben H. Walworth, in 1845 (John Tyler); the second nomination of Edward King, in 1845 (John Tyler); George H. Williams and Caleb Cushing, both in 1874 (Ulysses S. Grant); Abe Fortas and Homer Thornberry, both in 1968 (Lyndon B. Johnson); John G. Roberts Jr. and Harrier E. Miers, both in 2005 (George W. Bush). Less than a week after his first nomination was withdrawn, Paterson was renominated by President Washington and confirmed by the Senate on the same day. On the same day that President Bush withdrew the Roberts nomination to be Associate Justice, he renominated Roberts to be Chief Justice, and the latter nomination was confirmed.

[57] The 15 nominations that lapsed at the end of a session of Congress, without a Senate confirmation or rejection vote or a withdrawal by the President having occurred, can be broken into the following groups according to Senate actions, or lack of Senate actions, taken: On three nominations (John Crittenden in 1829, the first nomination of Roger Taney in 1835, and George E. Badger in 1853), the Senate voted to postpone taking action; the Senate tabled two nominations (the first nomination of Edward King in 1844 and Edward A. Bradford in 1852); on one nomination, the Senate rejected a motion to proceed (Jeremiah S. Black in 1861, by a 25-26 vote); and on nine nominations, there was no record of any vote taken (the second nomination of Reuben H. Walworth in 1844, John M. Read in 1845, William C. Micou in 1853, Henry Stanbery in 1866, the first nomination of Stanley Matthews in 1881, the first nomination of William B. Hornblower in 1893, the first nomination of Pierce Butler in 1922, the first nomination of John M. Harlan II in 1954, and Merrick B. Garland in 2016). However, four of the 15 persons whose nominations lapsed in one session of Congress were renominated in the next congressional session and confirmed (Taney in 1835, Matthews in 1881, Butler in 1922, and Harlan in 1955).

[58] For a list consisting solely of the 36 unconfirmed Supreme Court nominations as of 2010 (including dates that they were received in the Senate and received confirmation hearings, committee votes, and Senate debate), see Table 4 in CRS Report RL31171, *Supreme Court Nominations Not Confirmed, 1789-August 2010*, by Henry B. Hogue. Since then, the nomination of Merrick B. Garland in 2016 became the 37th Court nomination not to be confirmed.

[59] The six individuals who were not confirmed only to be later renominated and confirmed were, in the following years of confirmation shown in parentheses, William Paterson (1793), Roger B. Taney (1836), Stanley Matthews (1881), Pierce Butler (1922), John M. Harlan II (1955), and John G. Roberts Jr. (2005).

While the invariable practice of the Senate in recent decades has been to vote on Supreme Court nominations by roll call, this historically was usually not the case. **Table 2,** at the end of this report, shows that of the 136 Senate votes on whether to confirm (resulting in 125 confirmations and 11 rejections), 63 decisions were reached by roll-call votes, and the other 73 by voice vote or unanimous consent.

Initially, for some 40 years, the Senate rarely used roll-call votes to decide Supreme Court nominations. Starting in the 1830s, however, and continuing through the 1880s, the Senate used roll-call votes on Supreme Court nominations somewhat more often than unrecorded votes. The trend reversed between 1890 and 1965, when fewer than one-third of Senate decisions on confirming Court nominations were by roll-call vote. Since 1967, though, every Senate vote on whether to confirm a Supreme Court nomination has been by roll call. **Table 2** shows these trends within the four historical periods just noted, by breaking down the number of Senate decisions on confirmation within each period according to whether made by voice vote or unanimous consent (UC) on the one hand, or by roll-call vote, on the other. As already mentioned, all 11 Senate rejections of Supreme Court nominations were accomplished by roll-call votes.

Historically, recorded vote margins on Supreme Court nominations have varied considerably. Some roll-call votes, either confirming or rejecting a nomination, have been close.[60] Many votes, on the other hand, have been overwhelmingly in favor of confirmation.[61] A recent trend, however, has been for Supreme Court nominations to be confirmed by narrower vote margins. In the case of three of the four most recent Court nominations considered by the Senate—in 2006, 2009, and 2010—a solid majority of the Senate voted in favor of confirmation. In each instance, however, a minority of more than 30% of the Senate's Members voted against confirmation,[62] with all three nominations receiving nay votes from a majority of Senators not belonging to the President's party.[63] In keeping with this trend, the vote on a fourth, and most recent, Supreme Court nomination considered by the Senate (of Neil M. Gorsuch in 2017), was confirmed by a still closer 54-45 margin, by a near party-line vote.[64]

[60] The closest roll calls ever cast on Supreme Court nominations were the 24-23 vote in 1881 confirming Stanley Matthews, the 25-26 vote in 1861 rejecting a motion to proceed to consider the nomination of Jeremiah S. Black, and the 26-25 Senate vote in 1853 to postpone consideration of the nomination of George E. Badger. Since the 1960s, the closest roll calls on Supreme Court nominations were the 52-48 vote in 1991 confirming Clarence Thomas, the 45-51 vote in 1970 rejecting G. Harrold Carswell, the 54-45 vote in 2017 confirming Neil M. Gorsuch, the 45-55 vote in 1969 rejecting Clement Haynsworth Jr., the 58-42 vote in 2006 confirming Samuel A. Alito Jr., the 42-58 vote in 1987 rejecting Robert H. Bork, the 63-37 vote in 2010 confirming Elena Kagan, and the 65-33 vote confirming William H. Rehnquist to be Chief Justice in 1986. Also noteworthy was the 45-43 vote in 1968 rejecting a motion to close debate on the nomination of Abe Fortas to be Chief Justice; however, the roll call was not as close as the numbers by themselves suggested, since passage of the motion required a two-thirds vote of the Members present and voting.

[61] The most lopsided of these votes were the unanimous roll calls confirming Morrison R. Waite to be Chief Justice in 1874 (63-0), Harry A. Blackmun in 1970 (94-0), John Paul Stevens in 1975 (98-0), Sandra Day O'Connor in 1981 (99-0), Antonin Scalia in 1986 (98-0), and Anthony M. Kennedy in 1988 (97-0); and the near-unanimous votes confirming Noah H. Swayne in 1862 (38-1),Warren E. Burger in 1969 to be Chief Justice (74-3), Lewis F. Powell Jr. in 1971 (89-1), and Ruth Bader Ginsburg in 1993 (96-3).

[62] The Senate in 2006 confirmed Samuel A. Alito Jr. by a 58-42 vote, in 2009 confirmed Sonia Sotomayor by a 68-31 vote, and in 2010 confirmed Elena Kagan by a 63-37 vote. In the more distant past, it might be noted, the Senate has been similarly divided. For example, although it confirmed two of President Andrew Jackson's nominees to the Court (Roger B. Taney to be Chief Justice in 1836 and John Catron in 1837) by comfortable vote margins, on both occasions more than one-third of the votes cast were against confirmation, with the Senate confirming Taney 29-15 and Catron 28-15.

[63] See CRS Report R44234, *Supreme Court Appointment Process: Senate Debate and Confirmation Vote*, by Barry J. McMillion (under heading"Vote Outcome and Number of Nay Votes").

[64] See, for example, Alex Swoyer, "Senate Confirms Supreme Court Pick Gorsuch," *The Washington Times*, April 7, (continued...)

Days from Date of Senate Receipt of Nomination to First Hearing

For Supreme Court nominations, the amount of time elapsing between Senate receipt and start of confirmation hearings has varied greatly. **Table 1** shows that, for all 46 Court nominations receiving public confirmation hearings (starting with the Brandeis nomination in 1916), the shortest time that elapsed between Senate receipt and start of hearings was four days, for the nominations of both Benjamin N. Cardozo in 1932 and William O. Douglas in 1939; the second shortest time interval of this sort was five days, for the nominations of both Stanley F. Reed in 1938 and Felix Frankfurter in 1939. The longest time elapsing between Senate receipt and first day of confirmation hearings was 82 days, for the nomination of Potter Stewart in 1959; the next-longest time interval of this sort was 70 days, for nominee Robert H. Bork in 1987.

In recent decades, from the late 1960s to the present, the Judiciary Committee has tended to take more time in starting hearings on Supreme Court nominations than it did previously. **Table 1** reveals that prior to 1967, a median of 10 days elapsed between Senate receipt of Supreme Court nominations and the first day of confirmation hearings. From the Supreme Court nomination of Thurgood Marshall in 1967 through the nomination of Neil M. Gorsuch to be Associate Justice in 2017,[65] a median of 27 days elapsed between Senate receipt and first day of confirmation hearings.[66]

Starting in the 1990s, the inclination of the Judiciary Committee has been to allow at least four weeks to pass between Senate receipt of Supreme Court nominations and the start of confirmation hearings. This block of time is intended to be used by the committee members and staff for thorough study and review of background information about nominees and issues relevant to their nominations, in preparation for the hearings. In the case of eight of the nine most recent Court nominations to receive confirmation hearings (starting with the David H. Souter nomination in 1990), the shortest elapsed time between Senate receipt and first day of hearings was 28 days.[67] While the elapsed time for the ninth nomination, of John G. Roberts Jr. to be Chief Justice in 2005, was only six days, another, longer time interval is more meaningful. **Table 1** shows that Roberts's earlier nomination to be Associate Justice—later withdrawn, in order to have Roberts

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2017, at www.washingtontimes.com (noting that all but three Senators not of the President's party voted against, and all Senators of the President's party who were in the chamber voted for, confirming Gorsuch). The "relatively high number of nay votes received by recent nominations to the Supreme Court is atypical historically (at least since 1945). Additionally, the relatively high number of nay votes received by recent nominations reflects greater opposition than in the past by Senators not belonging to a President's party to nominations to the Court." CRS Report R44234, *Supreme Court Appointment Process: Senate Debate and Confirmation Vote*, by Barry J. McMillion

[65] In calculating the median elapsed time for the contemporary period, the Marshall nomination in 1967 was selected as the starting point for the following reason. The Marshall nomination, it could be argued, marked the start of an era in which the confirmation hearings of most, if not all, Supreme Court nominees were highly charged events, covered closely by the news media, with nominees interrogated rigorously and extensively (and for more than a day) about their judicial philosophy as well as their views on constitutional issues and the proper role of the Supreme Court in the U.S. government. For the Marshall nomination, the elapsed time between Senate receipt and start of confirmation hearings was 30 days.

[66] See bottom rows of **Table 1** for median number of days that elapsed from the date Supreme Court nominations were received in the Senate to first hearing dates, for three different time spans.

[67] For the eight nominations, the elapsed time between Senate receipt of nomination and the first day of confirmation hearings was 50 days for David Souter in 1990, 64 days for Clarence Thomas in 1991, 28 days for Ruth Bader Ginsburg in 1993, 56 days for Stephen G. Breyer in 1994, 60 days for Samuel A. Alito Jr. in 2005-2006, 42 days for Sonia Sotomayor in 2009, 49 days for Elena Kagan in 2010, and 47 days for Neil M. Gorsuch in 2017.

be renominated for Chief Justice—was received by the Senate 45 days prior to the start of hearings on his Chief Justice nomination.

Days from Senate Receipt to Final Committee Vote

The time elapsing between Senate receipt of Supreme Court nominations from the President and final committee votes has also varied greatly. **Table 1** shows that, for the 111 Court nominations that received final committee votes,[68] the nomination receiving the most prompt committee vote was of Caleb Cushing in 1874, which was reported by the Judiciary Committee on the same day that the Senate received it from the President.[69] The committee votes on 14 other nominations to the court occurred three days or less after the dates of Senate receipt.[70] At the other extreme was the 1916 nomination of Louis D. Brandeis, on which the Judiciary Committee voted 117 days after Senate receipt and referral to the committee. Five other nominations as well, one in the 19th century and four in the 20th, received committee votes more than 80 days after Senate receipt from the President.[71]

In recent decades, the Judiciary Committee has taken much more time in casting a final vote on Supreme Court nominations than it did previously. **Table 1** shows that prior to 1967, a median of nine days elapsed between Senate receipt of Supreme Court nominations and the committee's final vote on reporting them to the full Senate.[72] From the Supreme Court nomination of Thurgood Marshall in 1967 through the nomination of Neil M. Gorsuch in 2017, a median of 51 days elapsed between Senate receipt and final committee vote.[73]

Somewhat earlier, during the presidency of Dwight D. Eisenhower (1953 to 1961), two of five Supreme Court nominations were pending, prior to Judiciary Committee vote, in excess of the 1967-to-2017 median of 51 days for that time interval (while two other nominations were pending 44 and 49 days respectively before receiving committee action);[74] however, the corresponding

[68] As already mentioned, the first such nomination, of Alexander Wolcott in 1811, was reported by a select committee; all subsequently reported nominations were reported by the Senate Judiciary Committee.

[69] Ironically, five days after the committee's favorable, and extremely prompt, recommendation of Cushing, President Ulysses S. Grant withdrew the nomination.

[70] Five nominations were voted on by the Judiciary Committee one day after their receipt by the Senate: Robert C. Grier in 1846; John A. Campbell in 1853; Morrison R. Waite, to be Chief Justice, in 1874; Horace Gray in 1881; and Harold H. Burton in 1945. Six nominations were voted on by the committee two days after Senate receipt: James M. Wayne in 1835; Samuel Nelson in 1845; Noah H. Swayne in 1862; David Davis in 1862; Stephen J. Field in 1963; and Oliver Wendell Holmes in 1902. Three nominations were voted on by the committee three days after Senate receipt: Horace H. Lurton in 1909; Willis Van Devanter in 1910; and Joseph R. Lamar in 1910.

[71] The first of Reuben H. Walworth's three nominations to the Court in 1844 was voted on by the Judiciary Committee 93 days after Senate receipt and committee referral. During the 20th century, the Judiciary Committee, in addition to its 1916 vote on the Brandeis nomination, voted on the following nominations more than 80 days after Senate receipt: Potter Stewart in 1959 (93 days); Robert H. Bork in 1987 (91 days), Abe Fortas, to be Chief Justice, in 1968 (83 days); and Clarence Thomas in 1991 (81 days).

[72] All of the 15 aforementioned nominations on which the Judiciary Committee voted three days or less after Senate receipt were made prior to 1946, and 14 of the 15 were made prior to 1911.

[73] See bottom rows of **Table 1** for median number of days that elapsed from the date Supreme Court nominations were received in the Senate to final Senate vote dates, for three different time spans.

[74] The four Eisenhower nominations for which 44 or more days elapsed from the date received in the Senate to the date voted on by the Senate Judiciary Committee were those of: Earl Warren to be Chief Justice in 1954, 44 days; John M. Harlan II in 1955, 59 days; William J. Brennan Jr. in 1957, 49 days; and Potter Stewart in 1959, 93 days. Three of the nominees—Warren, Brennan, and Stewart—were already on the Court as recess appointees, a circumstance that served perhaps to make action on their nominations seem less urgent to the committee than if their seats on the Court had been vacant. Harlan, however, was not a recess appointee at the time of his nomination. See "The Harlan Nomination," *New*
(continued...)

time intervals for the next three Court nominations (two by President John F. Kennedy and one by President Lyndon B. Johnson) were all well below the 51-day median.[75]

Days from Senate Receipt to Final Senate or Presidential Action

The Supreme Court confirmation process now typically extends over a much longer period of time than it once did. **Table 1** shows that from the appointment of the first Justices in 1789, continuing into the early 20th century, most Senate confirmations of Supreme Court nominees occurred within a week of the nominations being made by the President. In recent decades, by contrast, it has become the norm for the Court appointment process—from Senate receipt of nominations from the President to Senate confirmation or other final action (such as Senate rejection, or withdrawal by the President)—to take more than two months.

The last column of **Table 1** shows the number of days that elapsed from the dates Supreme Court nominations were received in the Senate until the dates of final Senate or presidential action. The number of elapsed days is shown for 153 of the 162 nominations listed in the table, with no elapsed time shown for nine nominations on which there was no record of any kind of official or effective final action by the Senate or by the President.[76] At the bottom of the table, the median number of elapsed days from initial Senate receipt until final action by the Senate or the President is shown for three historical time spans—1789-2017, 1789-1966, and 1967-2017.

In recent decades, the median elapsed time for Supreme Court nominations to receive final action has increased dramatically, dwarfing the median time taken on earlier nominations. **Table 1** shows that from 1967 (starting with the nomination of Thurgood Marshall) through April 17, 2017 (the date on which the Senate confirmed the nomination of Neil M. Gorsuch) a median of 68 days elapsed from when a Supreme Court nomination was received in the Senate until the date it received final action, compared with a median of seven days for the same interval for the prior years of 1789 to 1966.[77] Most of the Supreme Court nominations receiving final action within a

(...continued)

York Times, February 25, 1955, p. 20, discussing, according to the editorial, the "inexcusable delay" on the part of the committee in acting on the nomination and the objections to the nomination voiced by a few of the committee's members. (Ultimately, the committee voted 10-4 to report the nomination favorably.) Receiving much more expeditious committee action was President Eisenhower's fifth Supreme Court nomination, of Charles E. Whittaker in 1957, which was approved by the Judiciary Committee 16 days after Senate receipt.

[75] The days that elapsed from the date received in the Senate to the date voted on by the Senate Judiciary Committee were eight days and 25 days for the 1962 nominations of Byron R. White and Arthur J. Goldberg and 13 days for the 1965 nomination of Abe Fortas to be Associate Justice.

[76] Besides nominations that received official final Senate action in the form of confirmation or rejection (125 and 11, respectively), or that were withdrawn by the President (11), six others are treated in the table as also receiving final action, albeit not of a definitive official sort—with three having been postponed by the Senate, two tabled, and one (the nomination of Jeremiah S. Black in 1861) not considered after a motion to proceed was defeated by a 25-26 vote. While the six nominations remained pending in the Senate after the noted actions, the effect of the actions, it can be argued, was decisive in eliminating any prospect of confirmation, and thus constituted a final Senate action for time measurement purposes. Accordingly, for these six nominations, the number of days elapsed is measured from date of Senate receipt to the dates of effective final action just noted.

[77] At first glance, the nomination of John G. Roberts Jr. for Chief Justice in 2005 appears to be a deviation from the 1967 to 2009 median interval from date received to final action of 68 days, as the nomination was confirmed only 23 days after its initial receipt in the Senate. However, it can be argued that a more meaningful context is to see the Roberts Chief Justice nomination (received in the Senate on September 6, 2005) in relation to the earlier July 29, 2005, nomination of Judge Roberts to be Associate Justice. After the death of Chief Justice William H. Rehnquist on September 3, 2005, the Roberts Associate Justice nomination was withdrawn, and he was renominated to be Chief Justice. Hearings on the Roberts Associate Justice nomination, set to begin on September 6, were cancelled, and rescheduled hearings, on the Chief Justice nomination, began on September 12. The overall time that elapsed from the (continued...)

relatively brief period of time—for example, within three days of initial receipt in the Senate—occurred before the 20th century,[78] while most of the nominations receiving final action after a relatively long period of time—for example, 75 days or more after receipt in the Senate—occurred in the 20th century (and nearly all of these since 1967).[79]

The presence of Senate committee involvement has clearly tended to increase the overall length of the Supreme Court confirmation process. Of the 26 Court nominations made prior to the establishment of the Judiciary Committee in 1816, only one, of Alexander Wolcott in 1811, received final action more than seven days after initial Senate receipt (being rejected by the Senate nine days after receipt). It also was the only Court nomination prior to 1816 which was referred to, and considered by, a select committee. Subsequently, until the Civil War, six nominations received final action more than 50 days after initial Senate receipt. All six were first considered and reported by the Judiciary Committee. During the same period, other Court nominations were considered and acted on by the Senate more quickly—some with, and some without, first being referred to committee.

Subsequent historical developments involving the Senate Judiciary Committee further served to increase the median length of the Supreme Court confirmation process. One such development was the Senate's adoption of a rule in 1868 that nominations be referred to appropriate standing committees, resulting in the referral of nearly all Supreme Court nominations thereafter to the Judiciary Committee. Another was the increasing practice of the Judiciary Committee in the 20th century of holding public confirmation hearings on Supreme Court nominations (ultimately to become standard practice). A third, more recent, historical trend has involved the pace and thoroughness of the Judiciary Committee in preparing for and conducting confirmation hearings. Since the late 1960s, close and thorough examination of the background, qualifications, and views of Supreme Court nominees has become the norm for the Judiciary Committee, an approach that typically extends the confirmation process by at least several weeks, as a result of preparation for and holding of confirmation hearings.

Recess Appointments to the Supreme Court

On 12 occasions in the nation's history, Presidents have made temporary recess appointments to the Supreme Court without first submitting nominations to the Senate. **Table 1** identifies all of these 12 appointments, showing how each was related to a later nomination of the appointee for the same position. The table shows that nine of the 12 recess appointments were made before the end of the Civil War,[80] with the last three made almost a century later, in the 1950s, during the presidency of Dwight D. Eisenhower.[81]

(...continued)

Associate Justice nomination of Judge Roberts on July 29 until Senate confirmation of his Chief Justice nomination on September 29 was 62 days.

[78] **Table 1** shows that 43 nominations received final Senate or presidential action three days or less after date of receipt in the Senate. Thirty-six of the 43 were pre-20th century nominations.

[79] **Table 1** shows that 17 nominations received final Senate or presidential action more than 75 days after date of receipt in the Senate. Thirteen of the 17 were 20th or 21st century nominations, with 11 made since 1967.

[80] See in **Table 1** the recess appointments of Thomas Johnson in 1791, John Rutledge (to be Chief Justice) in 1795, Bushrod Washington in 1798, H. Brockholst Livingston in 1806, Smith Thompson in 1823, John McKinley in 1837, Levi Woodbury in 1845, Benjamin R. Curtis in 1851, and David Davis in 1862.

[81] See in **Table 1** the recess appointments of Earl Warren (to be Chief Justice) in 1953, William J. Brennan Jr. in 1956, and Potter Stewart in 1958.

Each of the 12 recess appointments occurred when a President exercised his power under the Constitution to make recess appointments when the Senate was not in session.[82] Historically, when recesses between sessions of the Senate were much longer than they are today, recess appointments served the purpose of averting long vacancies on the Court when the Senate was unavailable to confirm a President's appointees. The terms of these recess appointments, however, were limited by the constitutional requirement that they expire at the end of the next session of Congress (unlike the lifetime appointments Court appointees receive when nominated and then confirmed by the Senate).[83]

Despite the temporary nature of these appointments, every person appointed during a recess of the Senate except for one—John Rutledge, to be Chief Justice, in 1795—ultimately received a lifetime appointment to the Court after being nominated by the President and confirmed by the Senate. As **Table 1** shows, all 12 of the recess appointees were subsequently nominated to the same position, and 11 (all except for Rutledge) were confirmed.

President Eisenhower's three recess appointments in the 1950s generated controversy. Concerns were expressed, among other things, over potential difficulties placed on Senators on the Judiciary Committee interrogating a nominee who already was sitting on the Court, and over the possibility of the judgments of a recess-appointed Justice being shaped by concerns with his eventual confirmation process.[84] The possibility of further recess appointments prompted the Senate in 1960, voting closely along party lines, to pass a resolution expressing opposition to Supreme Court recess appointments in the future.[85] More recently, the two Houses of Congress have, on a regular basis from the 110th Congress (2007-2008) onward, kept their recesses relatively short, effectively preventing Presidents from making any recess appointments (including to the Supreme Court) during those periods.[86]

[82] Specifically, Article II, Section 2, clause 3 of the U.S. Constitution empowers the President "to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session."

[83] For background on the history of recess appointments to the Supreme Court, and the policy and constitutional issues associated with those appointments, see CRS Report RL31112, *Recess Appointments of Federal Judges,* by Louis Fisher (out of print, available from author); and Henry B. Hogue, "The Law: Recess Appointments to Article III Courts," *Political Science Quarterly,* vol. 34, September 2004, p. 656.

[84] See U.S. Congress. Senate Committee on the Judiciary, *Expressing the Sense of the Senate That Recess Appointments to the Supreme Court of the United States Should Not Be Made Except Under Unusual Circumstances*, report to accompany S.Res. 334, 86th Cong., 2nd sess., August 22, 1960, S.Rept. 1893 (Washington: GPO, 1960).

[85] Adopted by the Senate on August 29, 1960, by a 48-37 vote, S.Res. 334 expressed the sense of the Senate that recess appointments to the Supreme Court "should not be made, except, under unusual circumstances and for the purpose of preventing or ending a demonstrable breakdown in the administration of the Court's business." "Opposition to Recess Appointments to the Supreme Court," debate in Senate on S.Res. 334, *Congressional Record*, vol. 106 (August 29, 1960), pp. 18130-18145.

[86] "From the 110th Congress onward," a CRS report has noted, "it has become common for the Senate and House to use certain scheduling practices as a means of precluding the President from making recess appointments. The practices do this by preventing the occurrence of a Senate recess of sufficient length for the President to be able to use his recess appointment authority. As previous discussed ..., in a June 26, 2014 opinion [Nat'l Labor Relations Bd. v. Noel Canning, 134 S. Ct. 2550 (2014)], the U.S. Supreme Court held that the President's recess appointment power may be used essentially only during a recess of 10 days or longer." CRS Report RS21308, *Recess Appointments: Frequently Asked Questions*, by Henry B. Hogue.

Concluding Observations

The preceding discussion suggests that Senate treatment of Supreme Court nominations has gone through various phases during the more than 200 years of the Republic. Initially, such nominations were handled without Senate committee involvement. Later, from 1816 to 1868, most nominations to the Supreme Court were referred to the Judiciary Committee, but only by motion. Since 1868, as the result of a change in its rules, the Senate has referred nearly all Court nominations to the Judiciary Committee. During the rest of the 19th century and early 20th century, the committee considered nominations without public hearings. Subsequently, public hearings gradually became the more common, if not invariable, committee practice, although many of the earlier hearings were perfunctory and held simply to accommodate a small number of witnesses wishing to testify against the nominees. Gradually, however, in the latter half of the 20th century, public hearings on Supreme Court nominations lasting four or more days—with nominees present part of the time to answer extensive questioning from committee members—would become the usual practice. This would remain the Judiciary Committee's practice in considering Supreme Court nominations in the 21st century.

Also, the overall length of time taken by the Supreme Court confirmation process has, in general, increased significantly over the course of more than 200 years. From the appointment of the first Justices in 1789, continuing well into the 20th century, most Supreme Court nominations received final action (usually, but not always, in the form of Senate confirmation) within a week of being submitted by the President to the Senate. In recent decades, by contrast, it has become the norm for the confirmation process to take from two to three months.

Historically, recorded vote margins on Supreme Court nominations have varied considerably. Some roll-call votes, either confirming or rejecting a nomination, have been close, while many other votes have been overwhelmingly in favor of confirmation. A trend in recent decades, however, has been for Supreme Court nominations which receive a Senate vote to be confirmed by narrower vote margins—with, as previously discussed, the four most recently confirmed nominations receiving nay votes from a majority of Senators not belonging to the President's party.

Other trends and historical phases may be discerned from **Tables 1** and **2**. Still other trends, of course, may be revealed by future nominations that Presidents make and by the actions taken on them by the Senate and its Judiciary Committee.

Table 1. Nominations to the Supreme Court of the United States, 1789-2017

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
John Jay of New York (Chief Justice, hereinafter C. J.)	Washington	09/24/1789	Nomination predated creation of Judiciary Committee in 12/10/1816. No record of other committee referral.			09/26/1789	Confirmed	—	—	2
John Rutledge of South Carolina	Washington	09/24/1789				09/26/1789	Confirmed	—	—	2
William Cushing of Massachusetts	Washington	09/24/1789				09/26/1789	Confirmed	—	—	2
Robert Harrison of Maryland	Washington	09/24/1789				09/26/1789	Confirmed (Nominee declined)	—	—	2
James Wilson of Pennsylvania	Washington	09/24/1789				09/26/1789	Confirmed	—	—	2
John Blair Jr. of Virginia	Washington	09/24/1789				09/26/1789	Confirmed	—	—	2
James Iredell of North Carolina	Washington	02/09/1790 (Nom. Date 02/08/1790)				02/10/1790	Confirmed	—	—	1

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Thomas Johnson of Maryland	Washington	*Recess Appointment, 08/05/1791*								
		11/01/1791 (Nom. Date 10/31/1791)	Nomination predated creation of Judiciary Committee in 12/10/1816. No record of other committee referral.			11/07/1791	Confirmed	—	—	6
William Paterson of New Jersey	Washington	02/27/1793				02/28/1793	Withdrawn	—	—	1
William Paterson of New Jersey	Washington	03/04/1793				03/04/1793	Confirmed	—	—	0
John Rutledge of South Carolina (C. J.)	Washington	*Recess Appointment, 07/01/1795*								
		12/10/1795	Nomination predated creation of Judiciary Committee in 12/10/1816. No record of other committee referral.			12/15/1795	Rejected (10-14)	—	—	5
William Cushing of Massachusetts (C. J.)	Washington	01/26/1796				01/27/1796	Confirmed (Nominee declined)	—	—	1
Samuel Chase of Maryland	Washington	01/26/1796				01/27/1796	Confirmed	—	—	1
Oliver Ellsworth of Connecticut (C. J.)	Washington	03/03/1796				03/04/1796	Confirmed (21-1)	—	—	1

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Bushrod Washington of Virginia	J. Adams	*Recess Appointment, 09/29/1798*								
		12/19/1798	Nomination predated creation of Judiciary Committee in 12/10/1816. No record of other committee referral.			12/20/1798	Confirmed	—	—	1
Alfred Moore of North Carolina	J. Adams	12/04/1799				12/10/1799	Confirmed	—	—	6
John Jay of New York (C. J.)	J. Adams	12/18/1800				12/19/1800	Confirmed (Nominee declined)	—	—	1
John Marshall of Virginia (C. J.)	J. Adams	01/20/1801				01/27/1801	Confirmed	—	—	7
William Johnson of South Carolina	Jefferson	03/22/1804				03/24/1804	Confirmed	—	—	2
H. Brockholst Livingston of New York	Jefferson	*Recess Appointment, 11/10/1806*								
		12/15/1806 (Nom. date 12/13/1806)	Nomination predated creation of Judiciary Committee in 12/10/1816. No record of other committee referral.			12/17/1806	Confirmed	—	—	2
Thomas Todd of Kentucky	Jefferson	02/28/1807				03/02/1807	Confirmed	—	—	2
Levi Lincoln of Massachusetts	Madison	01/02/1811				01/03/1811	Confirmed (Nominee declined)	—	—	1
Alexander Wolcott of Connecticut	Madison	02/04/1811	No record of hearing	Select Committee, 02/13/1811	Reported	02/13/1811	Rejected (9-24)	—	9	9

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
John Quincy Adams of Massachusetts	Madison	02/21/1811	Nomination predated creation of Judiciary Committee in 12/10/1816. No record of other committee referral.			02/22/1811	Confirmed (Nominee declined)	—	—	1
Joseph Story of Massachusetts	Madison	11/15/1811				11/18/1811	Confirmed	—	—	3
Gabriel Duvall of Maryland	Madison	11/15/1811				11/18/1811	Confirmed	—	—	3
Smith Thompson of New York	Monroe	*Recess Appointment, 09/01/1823*								
		12/08/1823 (Nom. date 12/5/1823)	Nomination was not referred to Judiciary Committee.			12/09/1823	Confirmed	—	—	1
Robert Trimble of Kentucky	J. Q. Adams	04/12/1826 (Nom. date 04/11/1826)	Motion to refer to Judiciary Committee rejected by Senate, 05/09/1826 (7-25)			05/09/1826	Confirmed (27-5)	—	—	27
John Crittenden of Kentucky	J. Q. Adams	12/18/1828 (Nom. date 12/17/1828)	No record of hearing	01/26/1829	Reported with recommen-dation not to act	02/12/1829	Postponed (23-17)	—	39	56
John McLean of Ohio	Jackson	03/06/1829	Nomination was not referred to Judiciary Committee.			03/07/1829	Confirmed	—	—	1
Henry Baldwin of Pennsylvania	Jackson	01/05/1830 (Nom. date 01/04/1830)	Nomination was not referred to Judiciary Committee.			01/06/1830	Confirmed (41-2)	—	—	1
James M. Wayne of Georgia	Jackson	01/07/1835 (Nom. date 01/06/1835)	No record of hearing	01/09/1835	Reported	01/09/1835	Confirmed	—	2	2

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Roger B. Taney of Maryland	Jackson	01/15/1835	Nomination was not referred to Judiciary Committee.			03/03/1835	Postponed (24-21)	—	—	47
Roger B. Taney of Maryland (C. J.)	Jackson	12/28/1835	No record of hearing	01/05/1836	Reported	Motion to proceed, 03/14/1836 (25-19)		—	8	78
						03/15/1836	Confirmed (29-15)			
Philip P. Barbour of Virginia	Jackson	12/28/1835	No record of hearing	01/05/1836	Reported	Motion to proceed, 03/15/1836 (25-20)		—	8	78
						03/15/1836	Confirmed (30-11)			
William Smith of Alabama	Jackson	03/03/1837	No record of hearing	03/08/1837	Reported	03/08/1837	Confirmed (23-18) (Nominee declined)	—	5	5
John Catron of Tennessee	Jackson	03/03/1837	No record of hearing	03/08/1837	Reported	03/08/1837	Confirmed (28-15)	—	5	5
John McKinley of Alabama	Van Buren	*Recess Appointment, 04/22/1837*								
		09/19/1837 (Nom. date 09/18/1837)	No record of hearing	09/25/1837	Reported	09/25/1837	Confirmed	—	6	6
Peter V. Daniel of Virginia	Van Buren	02/27/1841 (Nom. date 02/26/1841)	Nomination was not referred to Judiciary Committee.			03/02/1841	Confirmed (22-5)	—	—	3
John C. Spencer of New York	Tyler	01/09/1844 (Nom. date 01/08/1844	No record of hearing	01/30/1844	Reported	01/31/1844	Rejected (21-26)	—	21	22

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Reuben H. Walworth of New York	Tyler	03/13/1844	No record of hearing	06/14/1844	Reported	Tabled, 06/15/1844 (27-20)		—	93	96
						06/17/1844	Withdrawn			
Edward King of Pennsylvania	Tyler	06/05/1844	No record of hearing	06/14/1844	Reported	06/15/1844	Tabled (29-18)	—	9	10
John C. Spencer of New York	Tyler	06/17/1844	Nomination was not referred to Judiciary Committee.			06/17/1844	Withdrawn	—	—	0
Reuben H. Walworth of New York	Tyler	06/17/1844	Nomination was not referred to Judiciary Committee.			Motion to proceed objected to, 06/17/1844. Senate adjourned on same day, with no record of further action.		—	—	—
Reuben H. Walworth of New York	Tyler	12/10/1844 (Nom. date 12/04/1844)	No record of hearing	01/21/1845	Reported	Tabled, 01/21/1845		—	42	58
						02/06/1845	Withdrawn			
Edward King of Pennsylvania	Tyler	12/10/1844 (Nom. date 12/04/1844)	No record of hearing	01/21/1845	Reported	Tabled, 01/21/1845		—	42	60
						02/08/1845	Withdrawn			
Samuel Nelson of New York	Tyler	02/06/1845 (Nom. date 02/04/1845)	No record of hearing	02/08/1845	Reported	02/14/1845	Confirmed	—	2	8
John M. Read of Pennsylvania	Tyler	02/08/1845 (Nom. date 02/07/1845)	No record of hearing	02/14/1845	Reported	No record of action		—	6	—

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
George W. Woodward of Pennsylvania	Polk	12/23/1845	No record of hearing	01/20/1846	Reported	Motion to postpone rejected, 01/22/1846 (21-28)		—	28	30
						01/22/1846	Rejected (20-29)			
Levi Woodbury of New Hampshire	Polk	*Recess Appointment, 09/20/1845*								
		12/23/1845	No record of hearing	01/03/1846	Reported	01/03/1846	Confirmed	—	11	11
Robert C. Grier of Pennsylvania	Polk	08/03/1846	No record of hearing	08/04/1846	Reported	08/04/1846	Confirmed	—	1	1
Benjamin R. Curtis of Massachusetts	Fillmore	*Recess Appointment, 09/22/1851*								
		12/12/1851 (Nom. date 12/11/1851)	No record of hearing	12/23/1851	Reported	12/23/1851	Confirmed	—	11	11
Edward A. Bradford of Louisiana	Fillmore	08/21/1852 (Nom. Date 08/16/1852)	No record of hearing	08/30/1852	Reported	08/31/1852	Tabled	—	9	10
George E. Badger of North Carolina	Fillmore	01/10/1853 (Nom. Date 01/03/1853)	Nomination was not referred to Judiciary Committee.			02/11/1853	Postponed (26-25)	—	—	32
William C. Micou of Louisiana	Fillmore	02/24/1853 (Nom. Date 02/14/1853)	No record of hearing	Referred to Judiciary Committee on 02/24/1853. Senate ordered committee discharged of nomination on same day; no record of Senate consideration after discharge.				—	—	—
John A. Campbell of Alabama	Pierce	03/21/1853	No record of hearing	03/22/1853	Reported	03/22/1853	Confirmed	—	1	1

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Nathan Clifford of Maine	Buchanan	12/09/1857	No record of hearing	01/06/1858	Reported	01/12/1858	Confirmed (26-23)	—	28	34
Jeremiah S. Black of Pennsylvania	Buchanan	02/06/1861 (Nom. Date 02/05/1861)	Nomination was not referred to Judiciary Committee.			02/21/1861	Motion to proceed rejected (25-26)	—	—	15
Noah H. Swayne of Ohio	Lincoln	01/22/1862 (Nom. Date 01/21/1862)	No record of hearing	01/24/1862	Reported	01/24/1862	Confirmed (38-1)	—	2	2
Samuel F. Miller of Iowa	Lincoln	07/16/1862	Nomination was not referred to Judiciary Committee.			07/16/1862	Confirmed	—	—	0
David Davis of Illinois	Lincoln	*Recess Appointment, 10/17/1862*								
		12/03/1862 (Nom. date 12/01/1862)	No record of hearing	12/05/1862	Reported	12/08/1862	Confirmed	—	2	5
Stephen J. Field of California	Lincoln	03/07/1863 (Nom. date 03/06/1863	No record of hearing	03/09/1863	Reported	03/10/1863	Confirmed	—	2	3
Salmon P. Chase of Ohio (C. J.)	Lincoln	12/06/1864	Nomination was not referred to Judiciary Committee.			12/06/1864	Confirmed	—	—	0
Henry Stanbery of Ohio	A. Johnson	04/16/1866	No record of hearing	Referred to Judiciary Committee on 04/16/1866. No record of committee vote, and no record of Senate action after referral.				—	—	—
Ebenezer R. Hoar of Massachusetts	Grant	12/15/1869 (Nom. date 12/14/1869)	No record of hearing	12/22/1869	Reported adversely	02/03/1870	Rejected (24-33)	—	7	50

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Edwin M. Stanton of Pennsylvania	Grant	12/20/1869	Nomination was not referred to Judiciary Committee			12/20/1869	Confirmed (46-11) (Nominee died before assuming office)	—	—	0
William Strong of Pennsylvania	Grant	02/08/1870 (Nom. date 02/07/1870)	No record of hearing	02/14/1870	Reported favorably	02/18/1870	Confirmed	—	6	10
Joseph P. Bradley of New Jersey	Grant	02/08/1870 (Nom. date 02/07/1870)	No record of hearing	02/14/1870	Reported favorably	Postponed, 03/02/1870 (31-26)		—	6	41
						Motion to postpone rejected, 03/02/1870 (23-28)				
						03/21/1870	Confirmed (46-9)			
Ward Hunt of New York	Grant	12/06/1872 (Nom. date 12/03/1872)	No record of hearing	12/11/1872	Reported favorably	12/11/1872	Confirmed	—	5	5
George H. Williams of Oregon (C. J.)	Grant	12/02/1873 (Nom. date 12/01/1873)	No record of hearing	12/11/1873	Reported favorably	Recommitted, 12/15/1873		—	9	37
			Closed hearings[d] 12/16/1873 12/17/1873	—	—	01/08/1874	Withdrawn			
Caleb Cushing of Massachusetts (C. J.)	Grant	01/09/1874	No record of hearing	01/09/1874	Reported favorably	01/14/1874	Withdrawn	—	0	5

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Morrison R. Waite of Ohio (C. J.)	Grant	01/19/1874	No record of hearing	01/20/1874	Reported favorably	01/21/1874	Confirmed (63-0)	—	1	2
John Marshall Harlan of Kentucky	Hayes	10/17/1877 (Nom. date 10/16/1877)	No record of hearing	11/26/1877	Reported favorably	11/29/1877	Confirmed	—	40	43
William B. Woods of Georgia	Hayes	12/15/1880	No record of hearing	12/20/1880	Reported favorably	12/21/1880	Confirmed (39-8)	—	5	6
						Tabled motion to reconsider, 12/22/1880 (36-3)				
Stanley Matthews of Ohio	Hayes	01/26/1881	No record of hearing	Considered , 02/07/1881		No record of action		—	19	—
				02/14/1881	Postponed					
Stanley Matthews of Ohio	Garfield	03/18/1881 (Nom. date 03/14/1881)	No record of hearing	05/09/1881	Reported adversely (6-1)	05/12/1881	Confirmed (24-23)	—	52	55
Horace Gray of Massachusetts	Arthur	12/19/1881	No record of hearing	12/20/1881	Reported favorably	12/20/1881	Confirmed (51-5)	—	1	1
Roscoe Conkling of New York	Arthur	02/24/1882	No record of hearing	03/02/1882	Reported favorably	03/02/1882	Confirmed (39-12) (Nominee declined)	—	6	6
Samuel Blatchford of New York	Arthur	03/13/1882	No record of hearing	03/22/1882	Reported favorably	03/22/1882	Confirmed	—	9	9

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Lucius Q. C. Lamar of Mississippi	Cleveland	12/12/1887 (Nom. date 12/06/1887)	No record of hearing	01/10/1888	Reported adversely (5-4)	01/16/1888	Confirmed (32-28)	—	29	35
Melville W. Fuller of Illinois (C. J.)	Cleveland	05/02/1888 (Nom. date 04/30/1888)	No record of hearing	07/02/1888	Reported without recommen-dation	07/20/1888	Confirmed (41-20)	—	61	79
David J. Brewer of Kansas	Harrison	12/04/1889	No record of hearing	12/16/1889	Reported favorably	Motion to postpone rejected, 12/18/1889 (15-54)		—	12	14
						Motion to postpone rejected, 12/18/1889 (25-45)				
						12/18/1889	Confirmed (53-11)			
Henry B. Brown of Michigan	Harrison	12/23/1890	No record of hearing	12/29/1890	Reported favorably	12/29/1890	Confirmed	—	6	6
George Shiras Jr. of Pennsylvania	Harrison	07/19/1892	No record of hearing	07/25/1892	Reported without recommen-dation	07/26/1892	Confirmed	—	6	7
Howell E. Jackson of Tennessee	Harrison	02/02/1893	No record of hearing	02/13/1893	Reported favorably	02/18/1893	Confirmed	—	11	16
William B. Hornblower of New York	Cleveland	09/19/1893	No record of hearing	Considered, 09/25/1893 and 10/25 & 30/1893		No record of action		—	—	—

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
William B. Hornblower of New York	Cleveland	12/06/1893 (Nom. date 12/05/1893)	No record of hearing	Considered, 12/11, 14 & 18/1893		01/15/1894	Rejected (24-30)	—	33	40
				01/08/1894	Reported adversely					
Wheeler H. Peckham of New York	Cleveland	01/22/1894	No record of hearing	On question of reporting favorably, committee vote divided, 02/12/1894 (5-5)		02/16/1894	Rejected (32-41)	—	21	25
				02/12/1894	Reported without recommen-dation					
Edward D. White of Louisiana	Cleveland	02/19/1894	Nomination was not referred to Judiciary Committee			02/19/1894	Confirmed	—	—	0
Rufus W. Peckham of New York	Cleveland	12/03/1895	No record of hearing	12/09/1895	Reported favorably	12/09/1895	Confirmed	—	6	6
Joseph McKenna of California	McKinley	12/16/1897	No record of hearing	01/13/1898	Reported favorably	01/21/1898	Confirmed	—	28	36
Oliver Wendell Holmes of Massachusetts	T. Roosevelt	12/02/1902	No record of hearing	12/04/1902	Reported favorably	12/04/1902	Confirmed	—	2	2
William R. Day of Ohio	T. Roosevelt	02/19/1903	No record of hearing	02/23/1903	Reported favorably	02/23/1903	Confirmed	—	4	4
William H. Moody of Massachusetts	T. Roosevelt	12/03/1906	No record of hearing	12/10/1906	Reported favorably	12/12/1906	Confirmed	—	7	9

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Horace H. Lurton of Tennessee	Taft	12/13/1909	No record of hearing	12/16/1909	Reported favorably	12/20/1909	Confirmed	—	3	7
Charles Evans Hughes of New York	Taft	04/25/1910	No record of hearing	05/02/1910	Reported favorably	05/02/1910	Confirmed	—	7	7
Edward D. White of Louisiana (C. J.)	Taft	12/12/1910	Nomination was not referred to Judiciary Committee.			12/12/1910	Confirmed	—	—	0
Willis Van Devanter of Wyoming	Taft	12/12/1910	No record of hearing	12/15/1910	Reported favorably	12/15/1910	Confirmed	—	3	3
Joseph R. Lamar of Georgia	Taft	12/12/1910	No record of hearing	12/15/1910	Reported favorably	12/15/1910	Confirmed	—	3	3
Mahlon Pitney of New Jersey	Taft	02/19/1912	No record of hearing	03/04/1912	Reported favorably	03/13/1912	Confirmed (50-26)	—	14	23
James C. McReynolds of Tennessee	Wilson	08/19/1914	No record of hearing	08/24/1914	Reported favorably	08/29/1914	Confirmed (44-6)	—	5	10

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Louis D. Brandeis of Massachusetts	Wilson	01/28/1916	02/09/1916 02/10/1916 02/15/1916 02/16/1916 02/17/1916 02/18/1916 02/24/1916 02/25/1916 02/26/1916 02/29/1916 03/01/1916 03/02/1916 03/03/1916 03/04/1916 03/06/1916 03/07/1916 03/08/1916 03/14/1916 03/15/1916	05/24/1916	Reported favorably (10-8)	06/01/1916	Confirmed (47-22)	12	117	125
John H. Clarke of Ohio	Wilson	07/14/1916	No record of hearing	07/24/1916	Reported favorably	07/24/1916	Confirmed	—	10	10
William Howard Taft of Connecticut (C. J.)	Harding	06/30/1921	Nomination was not referred to Judiciary Committee.			06/30/1921	Confirmed (60-4) [e]	—	—	0
George Sutherland of Utah	Harding	09/05/1922	Nomination was not referred to Judiciary Committee.			09/05/1922	Confirmed	—	—	0
Pierce Butler of Minnesota	Harding	11/23/1922 (Nom. date 11/21/1922)	No record of hearing	11/28/1922	Reported favorably	Placed on Executive Calendar, 11/28/1922, with no record of further action		—	5	—

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Pierce Butler of Minnesota	Harding	12/05/1922	Closed hearings 12/09/1922 12/13/1922	12/18/1922	Reported favorably	Motion to recommit defeated, 12/21/1922 (7-63)		—	13	16
						12/21/1922	Confirmed (61-8)			
Edward T. Sanford of Tennessee	Harding	01/24/1923	No record of hearing	01/29/1923	Reported favorably	01/29/1923	Confirmed	—	5	5
Harlan F. Stone of New York	Coolidge	01/05/1925	Closed hearing 01/12/1925[f]	Reported favorably 01/21/1925		Recommitted 01/26/1925		—	28	31
			01/28/1925 (after 01/26/1925 recomt'l) [f]	02/02/1925	Reported favorably	02/05/1925	Confirmed (71-6)	23		
Charles Evans Hughes of New York (C. J.)	Hoover	02/03/1930	No hearing held	02/10/1930	Reported favorably (10-2)	Motion to recommit rejected, 02/13/1930 (31-49)		—	7	10
						02/13/1930	Confirmed (52-26)			
John J. Parker of North Carolina	Hoover	03/21/1930	04/05/1930	04/21/1930	Reported adversely (10-6)	05/07/1930	Rejected (39-41)	15	31	47
Owen J. Roberts of Pennsylvania	Hoover	05/09/1930	No hearing held	05/19/1930	Reported favorably	05/20/1930	Confirmed	—	10	11
Benjamin N. Cardozo of New York	Hoover	02/15/1932	02/19/1932	02/23/1932	Reported favorably	02/24/1932	Confirmed	4	8	9

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Hugo L. Black of Alabama	F. Roosevelt	08/12/1937	No hearing held	08/16/1937	Reported favorably (13-4)	Motion to recommit rejected, 08/17/1937 (15-66)		—	4	5
						08/17/1937	Confirmed (63-16)			
Stanley F. Reed of Kentucky	F. Roosevelt	01/15/1938	01/20/1938	01/24/1938	Reported favorably	01/25/1938	Confirmed	5	9	10
Felix Frankfurter of Massachusetts	F. Roosevelt	01/05/1939	01/10/1939 01/11/1939 01/12/1939	01/16/1939	Reported favorably	01/17/1939	Confirmed	5	11	12
William O. Douglas of Connecticut	F. Roosevelt	03/20/1939	03/24/1939	03/27/1939	Reported favorably	04/04/1939	Confirmed (62-4)	4	7	15
Frank Murphy of Michigan	F. Roosevelt	01/04/1940	01/11/1940	01/15/1940	Reported favorably	01/16/1940	Confirmed	7	11	12
Harlan F. Stone of New York (C. J.)	F. Roosevelt	06/12/1941	06/21/1941	06/23/1941	Reported favorably	06/27/1941	Confirmed	9	11	15
James F. Byrnes of South Carolina	F. Roosevelt	06/12/1941	Nomination was not referred to Judiciary Committee.			06/12/1941	Confirmed	—	—	0
Robert H. Jackson of New York	F. Roosevelt	06/12/1941	06/21/1941 06/231941 06/27/1941 06/30/1941	06/30/1941	Reported favorably	07/07/1941	Confirmed	9	18	25
Wiley B. Rutledge of Iowa	F. Roosevelt	01/11/1943	01/22/1943	02/01/1943	Reported favorably	02/08/1943	Confirmed	11	21	28

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Harold H. Burton of Ohio	Truman	09/18/1945	No hearing held	09/19/1945	Reported favorably	09/19/1945	Confirmed	—	1	1
Fred M. Vinson of Kentucky (C. J.)	Truman	06/06/1946	06/14/1946	06/19/1946	Reported favorably	06/20/1946	Confirmed	8	13	14
Tom C. Clark of Texas	Truman	08/02/1949	08/09/1949 08/10/1949 08/11/1949	08/12/1949	Reported favorably (9-2)	08/18/1949	Confirmed (73-8)	7	10	16
Sherman Minton of Indiana	Truman	09/15/1949	09/27/1949	10/03/1949	Reported favorably (9-2)	Motion to recommit rejected, 10/04/1949 (21-45)		12	18	19
						10/04/1949	Confirmed (48-16)			
Earl Warren of California (C. J.)	Eisenhower	*Recess Appointment, 10/02/1953*								
		01/11/1954	02/02/1954 02/19/1954	02/24/1954	Reported favorably (12-3)	03/01/1954	Confirmed	22	44	49
John M. Harlan II of New York	Eisenhower	11/09/1954	No hearing held	Referred to Judiciary Committee on 11/09/1954. No record of committee vote or Senate action.				—	—	—
John M. Harlan II of New York	Eisenhower	01/10/1955	02/25/1955[g]	03/10/1955	Reported favorably (10-4)	03/16/1955	Confirmed (71-11)	46	59	65
William J. Brennan Jr. of New Jersey	Eisenhower	*Recess Appointment, 10/15/1956*								
		01/14/1957	02/26/1957 02/27/1957	03/04/1957	Reported favorably	03/19/1957	Confirmed	43	49	64
Charles E. Whittaker of Missouri	Eisenhower	03/02/1957	03/18/1957	03/18/1957	Reported favorably	03/19/1957	Confirmed	16	16	17

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Potter Stewart of Ohio	Eisenhower	*Recess Appointment, 10/14/1958*								
		01/17/1959	04/09/1959 04/14/1959	04/20/1959	Reported favorably (12-3)	05/05/1959	Confirmed (70-17)	82	93	108
Byron R. White of Colorado	Kennedy	04/03/1962	04/11/1962	04/11/1962	Reported favorably	04/11/1962	Confirmed	8	8	8
Arthur J. Goldberg of Illinois	Kennedy	08/31/1962	09/11/1962 09/13/1962	09/25/1962	Reported favorably	09/25/1962	Confirmed	11	25	25
Abe Fortas of Tennessee	L. Johnson	07/28/1965	08/05/1965	08/10/1965	Reported favorably	08/11/1965	Confirmed	8	13	14
Thurgood Marshall of New York	L. Johnson	06/13/1967	07/13/1967 07/14/1967 07/18/1967 07/19/1967 07/24/1967	08/03/1967	Reported favorably (11-5)	08/30/1967	Confirmed (69-11)	30	51	78
Abe Fortas of Tennessee (C. J.)	L. Johnson	06/26/1968	07/11/1968 07/12/1968 07/16/1968 07/17/1968 07/18/1968 07/19/1968 07/20/1968 07/22/1968 07/23/1968 09/13/1968 09/16/1968	09/17/1968	Reported favorably (11-6)	Cloture motion rejected, 10/01/1968 (45-43)[h]		15	83	100
						10/04/1968	Withdrawn			

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Homer Thornberry of Texas	L. Johnson	06/26/1968	07/11/1968 07/12/1968 07/16/1968 07/17/1968 07/18/1968 07/19/1968 07/20/1968 07/22/1968 07/23/1968 09/13/1968 09/16/1968	Referred to Judiciary Committee, 06/26/1968. No committee vote taken.		10/04/1968	Withdrawn	15	—	100
Warren E. Burger of Virginia (C. J.)	Nixon	05/23/1969	06/03/1969	06/03/1969	Reported favorably	06/09/1969	Confirmed (74-3)	11	11	17
Clement F. Haynsworth Jr. of South Carolina	Nixon	08/21/1969	09/16/1969 09/17/1969 09/18/1969 09/19/1969 09/23/1969 09/24/1969 09/25/1969 09/26/1969	10/09/1969	Reported favorably (10-7)	11/21/1969	Rejected (45-55)	26	49	92
George Harrold Carswell of Florida	Nixon	01/19/1970	01/27/1970 01/28/1970 01/29/1970 02/02/1970 02/03/1970	02/16/1970	Reported favorably (13-4)	04/08/1970	Rejected (45-51)	8	28	79
Harry A. Blackmun of Minnesota	Nixon	04/15/1970	04/29/1970	05/06/1970	Reported favorably (17-0)	05/12/1970	Confirmed (94-0)	14	21	27

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			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Lewis F. Powell Jr. of Virginia	Nixon	10/22/1971	11/03/1971 11/04/1971 11/08/1971 11/09/1971 11/10/1971	11/23/1971	Reported favorably (16-0)	12/06/1971	Confirmed (89-1)	12	32	45
William H. Rehnquist of Arizona	Nixon	10/22/1971	11/03/1971 11/04/1971 11/08/1971 11/09/1971 11/10/1971	11/23/1971	Reported favorably (12-4)	Cloture motion rejected, 12/10/1971 (52-42)[i]		12	32	49
						Motion to postpone until 01/18/1972 rejected, 12/10/1971 (22-70)				
						12/10/1971	Confirmed (68-26)			
John Paul Stevens of Illinois	Ford	12/01/1975 (Nom. Date 11/28/1975)	12/08/1975 12/09/1975 12/10/1975	12/11/1975	Reported favorably (13-0)	12/17/1975	Confirmed (98-0)	7	10	16
Sandra Day O'Connor of Arizona	Reagan	08/19/1981	09/09/1981 09/10/1981 09/11/1981	09/15/1981	Reported favorably (17-1)	09/21/1981	Confirmed (99-0)	21	27	33
William H. Rehnquist of Arizona (C. J.)	Reagan	06/20/1986	07/29/1986 07/30/1986 07/31/1986 08/01/1986	08/14/1986	Reported favorably (13-5)	Cloture invoked, 09/17/1986 (68-31)[i]		39	55	89
						09/17/1986	Confirmed (65-33)			
Antonin Scalia of Virginia	Reagan	06/24/1986	08/05/1986 08/06/1986	08/14/1986	Reported favorably (18-0)	09/17/1986	Confirmed (98-0)	42	51	85

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			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Robert H. Bork of District of Columbia	Reagan	07/07/1987	09/15/1987 09/16/1987 09/17/1987 09/18/1987 09/19/1987 09/21/1987 09/22/1987 09/23/1987 09/25/1987 09/28/1987 09/29/1987 09/30/1987	Motion to report favorably rejected, 10/06/1987 (5-9)		10/23/1987	Rejected (42-58)	70	91	108
				10/06/1987	Reported unfavorably (9-5)					
On 10/29/1987, following the Senate's rejection of the nomination of Robert H. Bork, President Ronald Reagan announced his intention to nominate Douglas H. Ginsburg of the District of Columbia to be Associate Justice. Ginsburg, however, withdrew his name from consideration on 11/07/1987, before an official nomination had been made.										
Anthony M. Kennedy of California	Reagan	11/30/1987	12/14/1987 12/15/1987 12/16/1987	01/27/1988	Reported favorably (14-0)	02/03/1988	Confirmed (97-0)	14	58	65
David H. Souter of New Hampshire	G. H. W. Bush	07/25/1990	09/13/1990 09/14/1990 09/17/1990 09/18/1990 09/19/1990	09/27/1990	Reported favorably (13-1)	10/02/1990	Confirmed (90-9)	50	64	69
Clarence Thomas of Virginia	G. H. W. Bush	07/08/1991	09/10/1991 09/11/1991 09/12/1991 09/13/1991 09/16/1991 09/17/1991 09/19/1991 09/20/1991 10/11/1991 10/12/1991 10/13/1991	Motion to report favorably failed, 09/27/1991 (7-7)[k]		UC agreement reached, 10/08/1991, to reschedule vote on confirmation from 10/08/1991 to 10/15/991, to allow for additional hearings		64	81	99
				09/27/1991	Reported without recommen-dation	10/15/1991	Confirmed (52-48)			

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
					(13-1)					
Ruth Bader Ginsburg of New York	Clinton	06/22/1993	07/20/1993 07/21/1993 07/22/1993 07/23/1993	07/29/1993	Reported favorably (18-0)	08/03/1993	Confirmed (96-3)	28	37	42
Stephen G. Breyer of Massachusetts	Clinton	05/17/1994	07/12/1994 07/13/1994 07/14/1994 07/15/1994	07/19/1994	Reported favorably (18-0)	07/29/1994	Confirmed (87-9)	56	63	73
John G. Roberts Jr. of Maryland	G. W. Bush	07/29/2005	Referred to Judiciary Committee, 07/29/2005. No hearing held and no committee vote taken.			09/06/2005	Withdrawn	—	—	39
John G. Roberts Jr. of Maryland (C. J.)	G. W. Bush	09/06/2005	09/12/2005 09/13/2005 09/14/2005 09/15/2005	09/22/2005	Reported favorably (13-5)	09/29/2005	Confirmed (78-22)	6	16	23
Harriet E. Miers of Texas	G. W. Bush	10/07/2005	Referred to Judiciary Committee, 10/07/2005. No hearing held and no committee vote taken.			10/28/2005	Withdrawn	—	—	21
Samuel A. Alito Jr. of New Jersey	G. W. Bush	11/10/2005	01/09/2006 01/10/2006 01/11/2006 01/12/2006 01/13/2006	01/24/2006	Reported favorably (10-8)	Cloture invoked, 01/30/2006 (72-25) 01/31/2006	Confirmed (58-42)	60	75	82

Nominee	President	Date received in Senate[a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date[b]	Final vote	Date	Final action[c]	First public hearing date	Committee final vote date	Final action by Senate or President
Sonia Sotomayor of New York	Obama	06/01/2009	07/13/2009 07/14/2009 07/15/2009 07/16/2009	07/28/2009	Reported favorably (13-6)	08/06/2009	Confirmed (68-31)	42	57	66
Elena Kagan of Massachusetts	Obama	05/10/2010	06/28/2010 06/29/2010 06/30/2010 07/01/2010	07/20/2010	Reported favorably (13-6)	08/05/2010	Confirmed (63-37)	49	71	87
Merrick B. Garland of Maryland	Obama	03/16/2016	No hearing held	Referred to Judiciary Committee on 03/16/2016. With no subsequent committee vote or Senate action taken, nomination returned to President on 01/03/2017 at final adjournment of 114th Congress.				—	—	—
Neil M. Gorsuch of Colorado	Trump	02/01/2017	03/20/2017 03/21/2017 03/22/2017 03/23/2017	04/03/2017	Reported favorably (11-9)	Cloture motion rejected 04/06/2017 (55-45); Upon reconsideration, cloture invoked (55-45)[l]		47	61	65
						04/07/2017	Confirmed (54-45)			
Median number of days from date received in Senate, 1789-2017								15	11	10
Median number of days from date received in Senate, 1789-1966								10	9	7
Median number of days from date received in Senate, 1967-2017								27	51	68

Sources: U.S. Congress, Senate, *Journal of the Executive Proceedings of the Senate of the United States of America* (hereinafter, *Senate Executive Journal*), various editions from the 1st Congress through the 110th Congress; Senate Committee on the Judiciary, *Legislative and Executive Calendar*, various editions from the 77th Congress through the 103rd Congress; various newspaper accounts accessed on-line through ProQuest Historical Newspapers (the primary source for recorded vote tallies in committee prior to the 1980s); CRS Report RL31171, *Supreme Court Nominations Not Confirmed, 1789-August 2010*, by Henry B. Hogue; and "Nominations" database in the Legislative Information System, available at http://www.congress.gov/nomis/.

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a. In the 20th and 21st centuries, the date on which the President formally made a nomination, by signing a nomination message, usually has been the same as the date on which the nomination was received in the Senate. These two dates are the same for any given nomination when only one date is shown in the above table's "Date received in Senate" column. However, for a nomination made by a President on a date prior to the nomination's receipt by the Senate (a common occurrence in much of the 19th century), the earlier presidential nomination date ("Nom. date") is distinguished, in parentheses, from the later date when the nomination was received by the Senate.

b. For nominations prior to 1873 that were referred to committee, the "Final vote date" is the date recorded in the *Senate Executive Journal* on which the committee's chairman or other member reported the nomination to the Senate. For nominations from 1873 to 2005, the "Final vote date" is the date on which the Judiciary Committee voted to report a nomination or, in one instance (on February 14 1881, involving the first Stanley Matthews nomination), voted to postpone taking action.

c. "Final action," for purposes of this table, covers the following mutually exclusive outcomes: confirmation by the Senate ("Confirmed"), withdrawal of a nomination by the President ("Withdrawn") and Senate rejection by a vote disapproving a nomination ("Rejected"). In other instances, when none of the preceding three outcomes occurred, the last procedural action taken by the Senate on a nomination is indicated. On certain nominations, as indicated in the table, the last procedural outcome entailed tabling a nomination ("Tabled"), postponing consideration ("Postponed"), or rejecting a motion to proceed to consideration ("Motion to proceed rejected"). Final Senate actions taken by roll-call votes are shown in parentheses. Final Senate actions without roll-call votes shown in parentheses were reached by voice vote or unanimous consent. For roll-call votes shown above, the number of Yea votes always comes before the number of Nay votes. Thus, under "Confirmed" or "Rejected," the first number in the vote tally is the number of Senators who voted in favor of confirmation, and the second the number voting against confirmation.

d. On December 16 and 17, 1873, the Judiciary Committee held closed-door sessions to examine documents and hear testimony from witnesses relevant to a controversy that arose over the Williams nomination only after the committee had reported the nomination to the Senate. The controversy prompted the Senate to recommit the nomination to the Judiciary Committee and to authorize the committee "to send for persons and papers." *Senate Executive Journal*, vol. 19, p. 211. After holding the two closed-door sessions , the committee did not re-report the nomination to the Senate. Amid press reports of significant opposition to the nomination in both the Judiciary Committee and the Senate as a whole, the nomination, at Williams's request, was withdrawn by President Ulysses S. Grant on January 8, 1874. The December 16 and 17 sessions can be regarded as an early, perhaps the earliest, example of a Judiciary Committee closed-door hearing. However, the above table, which focuses in part on the times that elapsed between dates nominations were received in the Senate and dates of *public* confirmation hearings, does not count the time that elapsed from the date the Williams nominations was received in the Senate until the December 16 and 17, 1873, sessions, because they were closed to the public.

e. The 60-4 roll call vote to confirm Taft, conducted by the Senate in closed-door executive session, was not recorded in the *Senate Executive Journal*. Newspaper accounts, however, reported that a roll call vote on the nomination was demanded in the executive session, and that the vote was 60-4 to confirm, with an agreement reached afterwards not to make the roll call public. See Robert J. Bender, "Ex-President Taft New Chief Justice of United States," *Atlanta Constitution*, July 1, 1921, p. 1; Charles S. Groves, "Taft Is Confirmed, as Chief Justice," *Boston Daily Globe*, July 1, 1921, p. 1; and "Proceedings of Congress and Committees in Brief," *Washington Post*, July 1, 1921, p. 6.

f. The January 12, 1925, hearing, held in closed session, heard the testimony of former Sen. Willard Saulsbury of Delaware. "Nomination of Stone Is Held Up Once More," *New York Times,* January 13, 1925, p. 4. At the January 28, 1925, hearing, which was held in open session, the nominee was questioned by the Judiciary Committee for four hours. This was the first confirmation hearing for a Supreme Court nomination at which the nominee appeared in person to testify. See Albert W. Fox, "Stone Tells Senate Committee He Assumes Full Responsibility for Pressing New Wheeler Case," *Washington Post*, January 29, 1925, p. 1.

g. The Judiciary Committee held two days of confirmation hearings on the Harlan nomination, on February 24 and 25, 1955. The February 24 session, held in *closed* session, heard the testimony of nine witnesses (seven in favor of confirmation, and two opposed). Luther A. Huston, "Harlan Hearing Held by Senators," *New York Times,* February 25, 1955, p. 8. The committee also began the February 25 hearing in closed session, to hear the testimony of additional witnesses. However, for Judge Harlan, who was the last scheduled witness, the committee "voted to open the hearing to newspaper reporters for his testimony." Luther A. Huston, "Harlan Disavows 'One World' Aims in Senate Inquiry," *New York Times,* February 26, 1955, p. 1.

h. The 45 votes in favor of the motion to close debate fell far short of the super-majority required under Senate rules—then two-thirds of Senators present and voting. The cloture motion, if approved, would have closed a lengthy debate (which had consumed more than 25 hours over a four-day period) on a motion to proceed to consider the Fortas nomination.

i. The 52 votes in favor of the motion to close debate fell short of the super-majority required under Senate rules—then two-thirds of Senators present and voting. Although the cloture motion failed, the Senate later that day (December 10, 1971) agreed, without a procedural vote, to close debate and then voted to confirm Rehnquist 68-26.

j. The 68 votes in favor of the motion to close debate, by invoking cloture, exceeded the super-majority then required under Senate rules—namely, three-fifths of the Senate's full membership.

k. Motions to gain approval in Senate committees require a majority vote in favor and thus fail if there is a tie vote.

l. On April 6, 2017, a first vote on the motion to close debate on the Gorsuch nomination fell short of the super-majority required under Senate rules—then three-fifths of the Senate's full membership. Immediately thereafter, however, the Senate voted to reinterpret its cloture rule to allow cloture to be invoked on Supreme Court nominations by a simple majority of Senators voting (a quorum being present). The Senate then, pursuant to the rule reinterpretation, voted a second time on the motion to close debate on the nomination, exceeding the simple majority required. *Congressional Record*, daily edition, vol. 163 (April 6, 2017), pp. S2388-S2390. For a brief report explaining the Senate's April 6, 2017 actions, see CRS Report R44819, *Senate Proceedings Establishing Majority Cloture for Supreme Court Nominations: In Brief*, by Valerie Heitshusen.

Table 2. Senate Votes on Whether to Confirm Supreme Court Nominations: Number Made by Voice Vote/Unanimous Consent (UC) or by Roll-Call Vote

Years	By voice vote or UC (all to confirm)	By roll-call vote (votes to reject in parentheses)	Totals
1789-1829	24	4 (2)	28
1830-1889	15	21 (3)	36
1890-1965	34	16 (3)	50
1966-2017	0	22 (3)	22
Totals	73	63 (11)	136

Sources: U.S. Congress, Senate, *Journal of the Executive Proceedings of the Senate of the United States of America,* various editions from the 1st Congress through the 110th Congress; also, "Nominations" database in the Legislative Information System, available at http://www.congress.gov/nomis/.

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