

# Confirmation of U.S. Circuit and District Court Nominations During Presidential Election Years: Frequently Asked Questions

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September 18, 2020

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# Confirmation of U.S. Circuit and District Court Nominations During Presidential Election Years: Frequently Asked Questions

This report provides data and analysis related to frequently asked questions about the confirmation of U.S. circuit and district court nominations during presidential election years. Senators with different political views have at different times have spoken of their expectations of a potential drop-off in the confirmation of lower federal court nominees occurring earlier in presidential election years than in other years (and, consequently, the expectation that fewer such nominees would be confirmed in presidential election years). There is, however, no written Senate or Judiciary Committee rule concerning the processing of judicial nominations during presidential election years, and the volume and timing of the processing of such nominations has varied over time.

Senate interest in the confirmation of judicial nominees during presidential election years reflects, in part, the possibility that an election may produce partisan turnover in the presidential office even as a President's judicial nominees, if confirmed, are appointed to serve on the federal bench "during good Behaviour" (potentially life terms, barring impeachment and removal by Congress). Consequently, if there is partisan turnover in the presidential office, an incoming President may have fewer opportunities to appoint individuals to these positions if more nominations are confirmed during a presidential election year.

One theme discussed throughout this report is the influence of unified and divided party control in the confirmation of lower federal court nominees in presidential election years, as well as in other years. Unified party control occurs when the party affiliation of a President is the same as the majority party in the Senate. Conversely, divided party control occurs when the partisan affiliation of a President is different than the majority party in the Senate. In general, whether unified or divided party control exists during a given year likely influences the number and percentage of circuit and district court nominees confirmed during that same year. Unified and divided party control does not, however, explain all of the statistics presented in this report. For example, the greatest number of U.S. circuit court nominees confirmed during a presidential election year since 1980 was in 1992 (a year in which there was divided party control).

The report includes data from presidential election years and other years during the period 1977 to 2016 (i.e., from the Carter presidency through the Obama presidency). When relevant, data are also presented for the 2017 to 2020 period. Analysis of past data is not presented as being predictive of future activity by the Senate on judicial nominations during presidential election years or other years.

The report's findings include the following:

- The Senate has, on average, confirmed fewer U.S. circuit and district court nominees during presidential election years than during other years. The difference in the average number of circuit and district court nominees confirmed during presidential election years compared to other years is greater for the period 1993 to 2016 than it is for the period 1977 to 1992.
- The Senate has, on average, confirmed a smaller percentage of U.S. circuit and district court nominees during presidential election years than during other years. The difference in the average percentage of circuit and district court nominees confirmed during presidential election years compared to other years is greater for the period 1993 to 2016 than it is for the period 1977 to 1992.
- The Senate has, on average, confirmed a greater number and percentage of U.S. district court nominees than pending U.S. circuit court nominees during presidential election years.
- U.S. circuit and district court nominees who are first nominated during either the fourth or eighth year of a presidency—that is, during a presidential election year—were less likely to be confirmed than nominees who were first nominated during the other years of a presidency (with one exception: circuit and district court nominees who were first nominated during the seventh year of a presidency were less likely to be confirmed than such nominees who were first nominated during the fourth year of a presidency).
- During past presidential election years, the Senate has confirmed more U.S. circuit and district court nominations during the first half of the calendar year (i.e., January through June) than during the second

half of the calendar year (i.e., July through December). In contrast, during non-presidential election years, the Senate confirmed more U.S. circuit and district court nominations during the second half of the calendar year (i.e., July through December).

# Contents

Introduction .....	1
Scope of Report.....	2
Has the Senate confirmed fewer U.S. circuit and district court nominees during past presidential election years than during other years?.....	3
U.S. Circuit Court Nominees.....	3
U.S. District Court Nominees .....	4
Variation by Year .....	4
U.S. Circuit Court Nominees.....	4
U.S. District Court Nominees.....	5
The Influence of Unified Versus Divided Party Control.....	6
U.S. Circuit Court Nominees.....	6
U.S. District Court Nominees.....	7
The 2017 to 2020 Period.....	7
Has the Senate confirmed a smaller <i>percentage</i> of U.S. circuit and district court nominees during past presidential election years than during other years? .....	8
U.S. Circuit Court Nominees.....	9
U.S. District Court Nominees .....	9
Variation by Year .....	9
U.S. Circuit Court Nominees.....	10
U.S. District Court Nominees.....	11
The Influence of Unified Versus Divided Party Control.....	12
U.S. Circuit Court Nominees.....	12
U.S. District Court Nominees.....	13
The 2017 to 2020 Period.....	13
Have U.S. circuit and district court nominees who were <i>first</i> nominated during past presidential election years been less likely to be confirmed than nominees who were <i>first</i> nominated during other years? .....	14
U.S. Circuit Court Nominees.....	14
U.S. District Court Nominees .....	15
Variation by Presidency.....	15
U.S. Circuit Court Nominees.....	15
U.S. District Court Nominees.....	16
The Influence of Unified Versus Divided Party Control.....	17
The 2017 to 2020 Period.....	18
During which months were the greatest number of U.S. circuit and district court nominees confirmed during past presidential election years?.....	18
U.S. Circuit Court Nominees.....	18
Presidential Election Years.....	18
Other Years .....	20
U.S. District Court Nominees .....	20
Presidential Election Years.....	20
Other Years .....	21

## **Figures**

Figure 1. Average Number of U.S. Circuit and District Court Nominees Confirmed During Non-Presidential Election Years and Presidential Election Years .....	3
Figure 2. Number of U.S. Circuit Court Nominees Confirmed by Calendar Year .....	5
Figure 3. Number of U.S. District Court Nominees Confirmed by Calendar Year .....	6
Figure 4. Average Percentage of Pending U.S. Circuit and District Court Nominees Confirmed by the Senate During Non-Presidential and Presidential Election Years .....	9
Figure 5. Percentage of U.S. Circuit Court Nominees Confirmed by Calendar Year .....	10
Figure 6. Percentage of U.S. District Court Nominees Confirmed by Calendar Year .....	12
Figure 7. Percentage of U.S. Circuit and District Court Nominees Confirmed by Year of Presidency When Nominee Was First Nominated .....	15
Figure 8. U.S. Circuit Court Nominations Confirmed by Month During Presidential Election Years.....	19
Figure 9. U.S. District Court Nominations Confirmed by Month During Presidential Election Years.....	21

## **Tables**

Table 1. Percentage of U.S. Circuit Court Nominees Confirmed by Year When First Nominated During a Presidency .....	16
Table 2. Percentage of U.S. District Court Nominees Confirmed by Year When First Nominated During a Presidency .....	16

## **Contacts**

Author Information .....	22
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## Introduction

In recent decades, the processing of U.S. circuit and district court nominations during presidential election years has been an ongoing subject of interest in the Senate.<sup>1</sup> Of particular interest has been to what extent, if any, it has been customary for the Senate to slow down the pace at which it confirms judicial nominations during presidential election years (and, consequently, whether fewer nominations are confirmed by the Senate during such years).

The informal understanding shared by some Senators of a customary slowdown in the confirmation of lower federal court nominations during at least some presidential election years is sometimes referred to as the “Thurmond Rule.”<sup>2</sup> Note, though, that this term has not been adopted by all Senators to describe the past practice of slowing down the confirmation process of lower federal court nominations during at least some presidential election years (particularly for U.S. circuit court nominations).<sup>3</sup> Other Senators, meanwhile, have taken the position that the Senate has not, in fact, treated lower federal court nominations any differently during presidential election years compared to other years.<sup>4</sup>

Ultimately, there has not been, during the 1977 to 2016 period, apparent consensus or bipartisan agreement reached by Senators as to how many judicial nominations should be confirmed in a presidential election year or how late in the year they should be confirmed.<sup>5</sup>

<sup>1</sup> For a discussion, generally, of the confirmation process for U.S. circuit and district court nominees, see CRS Report R43762, *The Appointment Process for U.S. Circuit and District Court Nominations: An Overview*, by Barry J. McMillion.

<sup>2</sup> There is no written Senate or Judiciary Committee rule concerning the processing of judicial nominations in a presidential election year. The term “Thurmond Rule,” named after the late Senator and former Judiciary Committee Chairman Strom Thurmond of South Carolina, refers to the practice, or expectation, that there is a drop-off in the processing of lower federal court nominations by the Senate in presidential election years. Consequently, if this custom is observed, some might expect the Senate to slow down the processing of judicial nominations at an earlier point in a year, and confirm fewer nominations, in presidential election years than in other years. For an example of a Senator citing the Thurmond Rule during a past presidential election year, see Sen. Harry Reid, “Highway Technical Corrections Act of 2007—Motion to Proceed,” remarks in the Senate, *Congressional Record*, daily edition, vol. 154 (Apr. 15, 2008), p. S3012 (“you know, there is a Thurmond doctrine that says: After June, we will have to take a real close look at judges [judicial nominees] in a Presidential election year”). Other Senators have used the term “Thurmond Rule” to describe a potential slowdown in the confirmation of judicial nominees during presidential election years but have also emphasized, during at least some presidential election years, that the Senate continue to confirm nominees with bipartisan support—particularly district court nominees. See, for example, Sen. Patrick Leahy, remarks in the Senate, *Congressional Record*, daily edition, vol. 158 (Sep. 21, 2012), p. S6609 (“never have I seen the Thurmond Rule used to block votes on consensus district court nominees.”).

<sup>3</sup> See, for example, Sen. Orrin G. Hatch, “The Confirmation Process,” remarks in the Senate, *Congressional Record*, daily edition, vol. 154 (Apr. 1, 2008), p. S2264 (“The Thurmond Rule neither is a rule nor can it be attributed to the late Senator Strom Thurmond”) and Sen. Orrin G. Hatch, “Transcript of Proceedings, United States Senate, Committee on the Judiciary, Executive Session, July 20, 2000,” Miller Associates Reporting Service, pp. 6-7, (in “presidential election years, the confirmation of appellate court nominees historically has slowed.”). See also Sen. Charles Grassley, “Recess Appointments at Judiciary Executive Meeting,” prepared statement for immediate release, January 26, 2012, at <https://www.grassley.senate.gov/news/news-releases/recess-appointments-judiciary-executive-business-meeting> (The “circumstance that changes this year, as everyone is aware, is that this is a Presidential election year. The historical practice [on nominations] has been for work to slow down a great deal during such years.”).

<sup>4</sup> See, for example, Sen. Arlen Specter, “Judicial Nominations,” remarks in the Senate, *Congressional Record*, daily edition, vol. 153 (Jan. 4 2007), p. S27 (Some “have suggested that this so-called rule holds that the Senate should dramatically curtail confirmations after the spring of a presidential election year. Review of the historical record suggests that this rule is more myth than reality.”).

<sup>5</sup> For a discussion of the 1977 to 2008 period, see CRS Report RL34615, *Nomination and Confirmation of Lower Federal Court Judges in Presidential Election Years*, by Denis Steven Rutkus (available upon request by congressional

Institutional and political factors that may influence the confirmation of judicial nominations by the Senate during a presidential election year (or any other year) include how many judicial vacancies exist (thereby affecting how many judicial nominations a President may potentially submit to the Senate), how many judicial nominations that were submitted during prior years of a presidency are pending in the Senate, how many new nominations are submitted or resubmitted during the same year in question, whether the party affiliation of the President is the same as the majority party in the Senate (i.e., the presence or absence of divided party control), the point in a congressional session when nominations arrive in the Senate, whether nominees have the support of both of their home state Senators, whether the “blue slip” policy of the Senate Judiciary Committee requires the support of both home state Senators before a nominee can receive a hearing or committee vote, and the overall number of days the Senate is in session and the nature of its overall workload during the year.<sup>6</sup>

## Scope of Report

This report provides data and analysis related to several prominent issues or frequently asked questions about the confirmation of U.S. circuit and district court nominations during past presidential election years.<sup>7</sup> Specifically, for the period from 1977 to 2016,<sup>8</sup> the report addresses the following issues:

1. Whether the Senate confirmed fewer U.S. circuit and district court nominees during presidential election years than during other years;
2. Whether the Senate confirmed a smaller percentage of U.S. circuit and district court nominees during presidential election years than during other years;
3. Whether U.S. circuit and district court nominees who were first nominated during presidential election years were less likely to be confirmed than nominees who were first nominated during other years of a presidency; and
4. In which months, during presidential election years, the Senate confirmed the fewest and greatest number of U.S. circuit and district court nominees (and how this compares to the number of such nominees confirmed by month during non-presidential election years).<sup>9</sup>

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staff from the author of the current report).

<sup>6</sup> For a discussion of the Senate Judiciary Committee “blue slip” policy and judicial nominations, see CRS Report R44975, *The Blue Slip Process for U.S. Circuit and District Court Nominations: Frequently Asked Questions*, by Barry J. McMillion.

<sup>7</sup> An examination of the historical origin and use of the term “Thurmond Rule” is beyond the scope of this report. Consequently, this report does not analyze either the debate surrounding the origin of the term or under what circumstances it has been cited, or applied, during the judicial confirmation process in past presidential election years.

<sup>8</sup> In general, the first year of the Carter presidency (1977) has been used as the initial year in the analyses included in past similar CRS products. Data for years prior to 1977 are available from the author upon request by congressional staff.

<sup>9</sup> The data sources for the statistics presented in this report include the internal CRS judicial nominations database and *Congress.gov*.



# Has the Senate confirmed fewer U.S. circuit and district court nominees during past presidential election years than during other years?

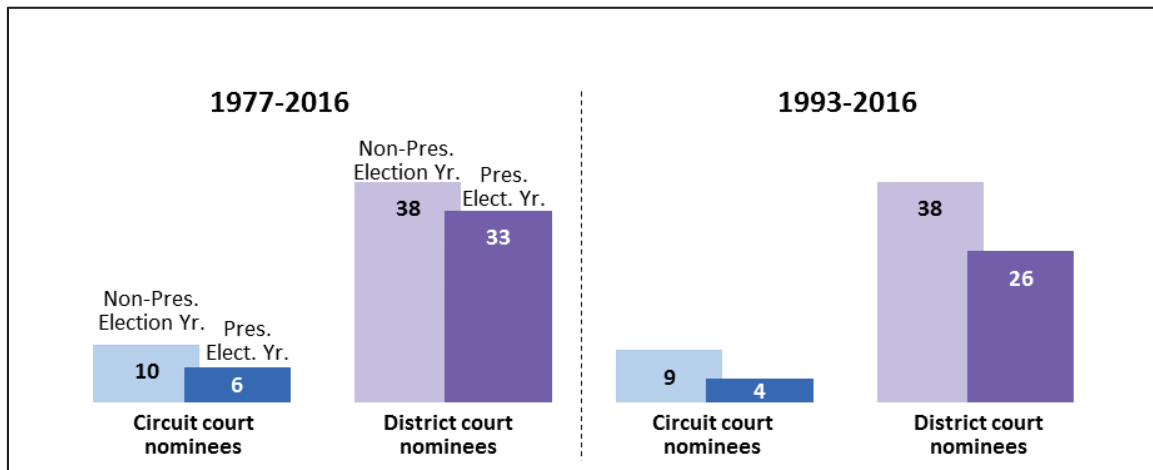
Overall, during the period 1977 to 2016, the Senate confirmed, on average, fewer U.S. circuit and district court nominees during presidential election years than during other years.

## U.S. Circuit Court Nominees

As shown by **Figure 1**, the average number of U.S. circuit court nominees confirmed during non-presidential election years from 1977 to 2016 was 10.<sup>10</sup> In presidential election years during the same period, the Senate confirmed, on average, 4 fewer circuit court nominees (for an average of 6 circuit court nominees confirmed during presidential election years from 1980 to 2016).

For the more recent period, 1993 to 2016,<sup>11</sup> the average number of U.S. circuit court nominees confirmed during non-presidential election years was 9. In presidential election years during the same period, the Senate confirmed, on average, 5 fewer circuit court nominees (for an average of 4 circuit court nominees confirmed during presidential election years from 1996 to 2016).

**Figure 1. Average Number of U.S. Circuit and District Court Nominees Confirmed During Non-Presidential Election Years and Presidential Election Years (1977-2016)**



**Source:** Internal CRS judicial nominations database.

<sup>10</sup> Any average or mean presented in the text of the report has been rounded to the nearest whole number.

<sup>11</sup> For the purposes of this report, the more “recent period” is defined as the years 1993 through 2016. As discussed in the report, this is the period for which there were some notable changes in the processing of judicial nominations during presidential election years (as well as during other years). See, for example, the data presented in **Figure 8**. Changes in the processing of judicial nominations during this period are also discussed in CRS Report R45622, *Judicial Nomination Statistics and Analysis: U.S. District and Circuit Courts, 1977-2018*, by Barry J. McMillion (see, for example, the section in the report titled “Multiple Nominations of the Same Person Prior to Final Action by the Senate.”).



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# Congressional Procedure

**A Practical Guide to the Legislative Process in the U.S. Congress**

**Richard A. Arenberg**

Foreword by Alan S. Frumin

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## U.S. District Court Nominees

**Figure 1** shows that, for the period 1977 to 2016, the average number of U.S. district court nominees confirmed during non-presidential election years was 38. In presidential election years during the same period, the Senate confirmed, on average, 5 fewer district court nominees (for an average of 33 district court nominees confirmed during presidential election years from 1980 to 2016).

For the more recent period, 1993 to 2016, the average number of U.S. district court nominees confirmed during non-presidential election years was 38 (the same as it was for the entire 1977-2016 period). For presidential election years during the same period, however, the Senate confirmed, on average, 12 fewer district court nominees (for an average of 26 district court nominees confirmed during presidential election years from 1996 to 2016).

## Variation by Year

Although the Senate confirmed, on average from 1977 to 2016, fewer U.S. circuit and district court nominees during presidential election years than during other years, there was notable variation across presidential election years (as well as other years). **Figures 2 and 3** show, respectively, the number of U.S. circuit and district court nominees confirmed during each calendar year from 1977 to 2016.

## U.S. Circuit Court Nominees

### *Presidential Election Years*

As shown by **Figure 2**, the number of U.S. circuit court nominees confirmed during presidential election years ranged from a low of 1 in 2016 (during the eighth year of the Obama presidency) to a high of 11 in 1992 (during the fourth year of the George H.W. Bush presidency).

The second-fewest number of circuit court nominees confirmed during a presidential election year was in 1996 (2 nominees during the fourth year of the Clinton presidency), whereas the second-greatest number of circuit court nominees confirmed during presidential election years occurred in both 1980 and 1984 (10 nominees during each of the fourth years of the Carter and Reagan presidencies, respectively).

For presidential election years during the period 1977 to 2016, the specific numbers of U.S. circuit court nominees confirmed during each year (in chronological order) were as follows: 1980 (10), 1984 (10), 1988 (7), 1992 (11), 1996 (2), 2000 (8), 2004 (5), 2008 (4), 2012 (5), and 2016 (1).

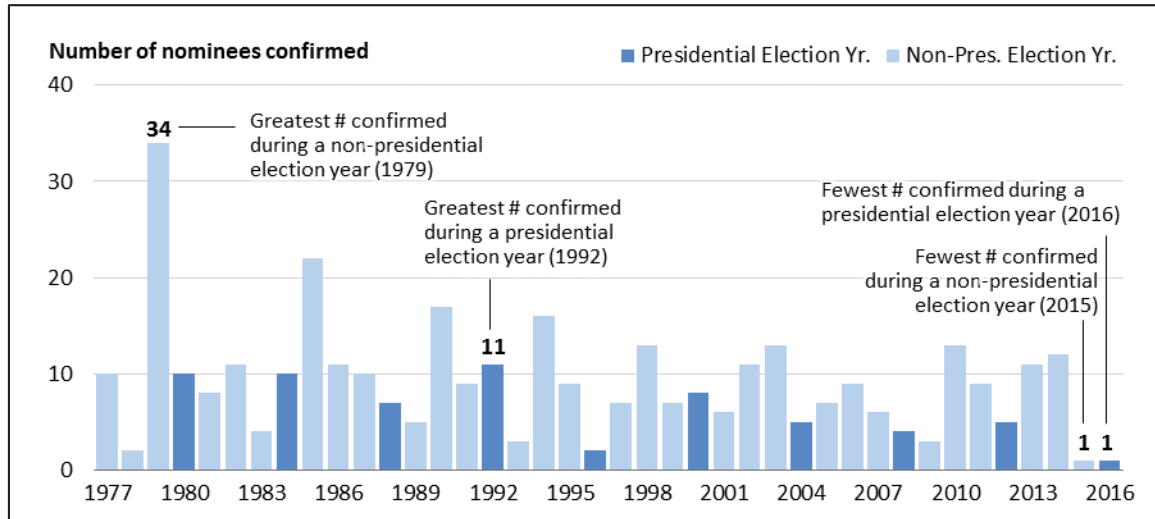
### *Other Years*

As shown **Figure 2**, the number of U.S. circuit court nominees confirmed during years that did not feature a presidential election ranged from a low of 1 in 2015 (during the seventh year of the Obama presidency) to a high of 34 in 1979 (during the third year of the Carter presidency).

The second-fewest number of circuit court nominees confirmed during a non-presidential election year was in 1978 (2 nominees during the second year of the Carter presidency), whereas the second-greatest number of circuit court nominees confirmed during a non-presidential election year was in 1985 (22 nominees during the fifth year of the Reagan presidency).

For non-presidential election years during the period 1977 to 2016, the specific numbers of U.S. circuit court nominees confirmed during each year (in chronological order) were as follows: 1977 (10), 1978 (2), 1979 (34), 1981 (8), 1982 (11), 1983 (4), 1985 (22), 1986 (11), 1987 (10), 1989 (5), 1990 (17), 1991 (9), 1993 (3), 1994 (16), 1995 (9), 1997 (7), 1998 (13), 1999 (7), 2001 (6), 2002 (11), 2003 (13), 2005 (7), 2006 (9), 2007 (6), 2009 (3), 2010 (13), 2011 (9), 2013 (11), 2014 (12), and 2015 (1).

**Figure 2. Number of U.S. Circuit Court Nominees Confirmed by Calendar Year (1977-2016)**



Source: Internal CRS judicial nominations database.

## U.S. District Court Nominees

### *Presidential Election Years*

As shown by **Figure 3**, the number of U.S. district court nominees confirmed during presidential election years ranged from a low of 8 in 2016 (during the eighth year of the Obama presidency) to a high of 53 in both 1980 and 1992 (during the fourth years of the Carter and George H.W. Bush presidencies, respectively).

The second-fewest number of district court nominees confirmed during a presidential election year was in 1996 (18 nominees during the fourth year of the Clinton presidency), whereas the second-greatest number of district court nominees confirmed during a presidential election year was in 2012 (44 nominees during the fourth year of the Obama presidency).

For presidential election years during the period 1977 to 2016, the specific numbers of U.S. district court nominees confirmed during each year (in chronological order) were as follows: 1980 (53), 1984 (33), 1988 (33), 1992 (53), 1996 (18), 2000 (31), 2004 (30), 2008 (24), 2012 (44), and 2016 (8).

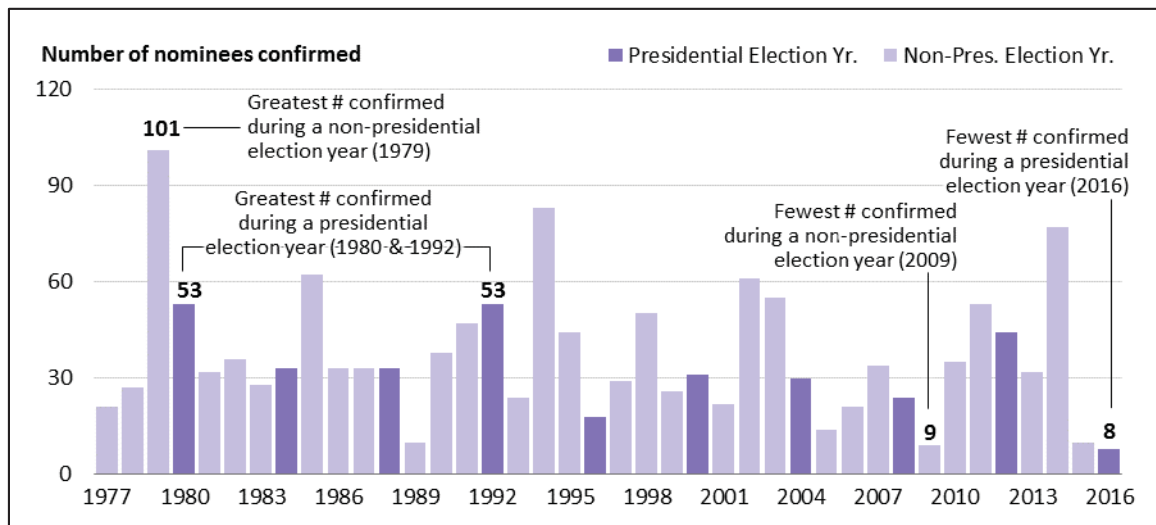
### *Other Years*

**Figure 3** also shows that the number of U.S. district court nominees confirmed during non-presidential election years ranged from a low of 9 in 2009 (during the first year of the Obama presidency) to a high of 101 in 1979 (during the third year of the Carter presidency).

The second-fewest number of district court nominees confirmed during non-presidential election years occurred in 1989 and 2015 (10 nominees during both the first year of the George H. W. Bush presidency and the seventh year of the Obama presidency, respectively), whereas the second-greatest number of district court nominees confirmed during a non-presidential election year was in 1994 (83 nominees during the second year of the Clinton presidency).

For non-presidential election years during the period 1977 to 2016, the specific numbers of U.S. district court nominees confirmed during each year (in chronological order) were as follows: 1977 (21), 1978 (27), 1979 (101), 1981 (32), 1982 (36), 1983 (28), 1985 (62), 1986 (33), 1987 (33), 1989 (10), 1990 (38), 1991 (47), 1993 (24), 1994 (83), 1995 (44), 1997 (29), 1998 (50), 1999 (26), 2001 (22), 2002 (61), 2003 (55), 2005 (14), 2006 (21), 2007 (34), 2009 (9), 2010 (35), 2011 (53), 2013 (32), 2014 (77), and 2015 (10).

**Figure 3. Number of U.S. District Court Nominees Confirmed by Calendar Year (1977-2016)**



Source: Internal CRS judicial nominations database.

## The Influence of Unified Versus Divided Party Control

The existence of unified or divided party control likely played a role in the number of U.S. circuit and district court nominees confirmed by the Senate during at least one or more years from 1977 to 2016.<sup>12</sup>

### U.S. Circuit Court Nominees

During presidential election years in which there was unified party control, the Senate confirmed, on average, eight U.S. circuit court nominees. In contrast, during presidential election years in which there was divided party control, the Senate confirmed, on average, six circuit court nominees.

<sup>12</sup> For the purposes of this report, *unified party control* is used to describe years when the party affiliation of the President was the same as the majority party in the Senate. Conversely, *divided party control* is used to describe years when the party affiliation of the President was different than the majority party in the Senate.

Similarly, during non-presidential election years in which there was unified party control, the Senate confirmed, on average, 11 U.S. circuit court nominees.<sup>13</sup> In contrast, during non-presidential election years in which there was divided party control, the Senate confirmed, on average, 9 circuit court nominees.

Unified and divided party control does not explain all of the variation in the number of U.S. circuit court nominees confirmed each year during the period from 1977 to 2016. For example, the greatest number of circuit court nominees confirmed during a presidential election year occurred in 1992 (a year of divided party control). Additionally, as another example, the Senate confirmed the same number of circuit court nominees in 1998 (a year of divided party control) as it did in 2003 and 2010 (both years of unified party control).

## **U.S. District Court Nominees**

During presidential election years in which there was unified party control, the Senate confirmed, on average, 40 U.S. district court nominees. In contrast, during presidential election years in which there was divided party control, the Senate confirmed, on average, 28 district court nominees.

Similarly, during non-presidential election years in which there was unified party control, the Senate confirmed, on average, 41 U.S. district court nominees. In contrast, during non-presidential election years in which there was divided party control, the Senate confirmed, on average, 35 district court nominees.

As with circuit court nominees, unified or divided party control does not explain all of the variation in the number of district court nominees confirmed each year from 1977 to 2016. For example, 53 nominees were confirmed in each of 1980 (a year of unified party control) and 1992 (a year of divided party control)—both years had the greatest number of district court nominees confirmed during presidential election years since 1977. As another example, the Senate confirmed fewer district court nominees in 2009 (a year of unified party control) than it did in 2015 (a year of divided party control).

## **The 2017 to 2020 Period**

Because there are current nominations that were submitted by President Trump pending before the Senate, the years of the Trump presidency are not included in the figures above.<sup>14</sup> Some data, however, are available for the past several years.

The average number of U.S. circuit court judges confirmed annually from 2017 through 2019 (three non-presidential election years) was 17. The fewest number of nominees confirmed during this three-year period was 12 (in 2017 during the first year of the Trump presidency) and the greatest number was 20 (in 2019 during the third year of the Trump presidency). As of September

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<sup>13</sup> The year 2001 is omitted from this part of the analysis (in this section and other sections analyzing the influence of unified and divided party control) given that majority control of the Senate changed on June 6, 2001, when Senator James Jeffords changed his party affiliation from Republican to Independent and announced he would caucus with Senate Democrats. Consequently, as this change in majority control of the Senate occurred during the George W. Bush presidency, there was also a change from unified to divided party control.

<sup>14</sup> Data for the period 2017 to 2020 will be incorporated into the figures and accompanying text of this report when it is updated in the future.



18, 2020, three circuit court nominees have been confirmed during the current presidential election year.<sup>15</sup>

The average number of U.S. district court judges confirmed annually from 2017 through 2019 was 44. The fewest number of nominees confirmed during this three-year period was 6 (in 2017 during the first year of the Trump presidency) and the greatest number was 80 (in 2019 during the third year of the Trump presidency).<sup>16</sup> As of September 18, 2020, 24 district court nominees have been confirmed during the current presidential election year.<sup>17</sup>

## Has the Senate confirmed a smaller *percentage* of U.S. circuit and district court nominees during past presidential election years than during other years?

The *percentage* of nominees confirmed by the Senate, in contrast to the *number* of nominees confirmed, takes into account the number of nominations submitted to the Senate by a President.<sup>18</sup>

Overall, during the period 1977 to 2016, the Senate confirmed, on average, a smaller percentage of U.S. circuit and district court nominees during presidential election years than during other years.<sup>19</sup>

<sup>15</sup> This reflects the fact that, at present, there are no U.S. circuit court vacancies. Although vacancies are not discussed in-depth in this report, the number of circuit and district court vacancies that exist during any given year can influence the number of individuals nominated by a President and, consequently, the number of nominees confirmed by the Senate. For an analysis of district court vacancies that exist at the end of a President's fourth year in office, see CRS Insight IN11449, *U.S. District Court Vacancies at the End of a President's Fourth Calendar Year in Office*, by Barry J. McMillion.

<sup>16</sup> In 2018, there were 47 U.S. district court judges confirmed.

<sup>17</sup> As of this same date, there are 33 pending U.S. district court nominations (either in the Senate Judiciary Committee or on the *Executive Calendar*).

<sup>18</sup> The percentage of nominees confirmed during each year from 1977 to 2016 is calculated by dividing the number of nominees who were confirmed during a particular year by the number of nominees who had a nomination pending before the Senate during that same calendar year (regardless of whether that pending nomination was carried over from a previous year or newly submitted during the calendar year in question). For example, John M. Rogers was nominated to the Sixth Circuit by President G.W. Bush on December 19, 2001. He was subsequently confirmed on November 14, 2002. For the calculations used to present the confirmation percentages in this section of the report, he would count as an unconfirmed nominee for 2001 and a confirmed nominee for 2002.

For the purposes of this report, if a nominee's nomination was pending in the Senate in early January (during the final days of a Congress) before being returned and the nomination was *not* resubmitted by a President, the nominee's nomination is not included as a pending nomination during that particular calendar year.

Note also that the percentages reported in this section do *not* address the percentage of nominees who were nominated during a given year who were ultimately confirmed by the Senate (for those data, see section titled "Have U.S. circuit and district court nominees who were *first* nominated during presidential election years been less likely to be confirmed than nominees who were *first* nominated during other years?").

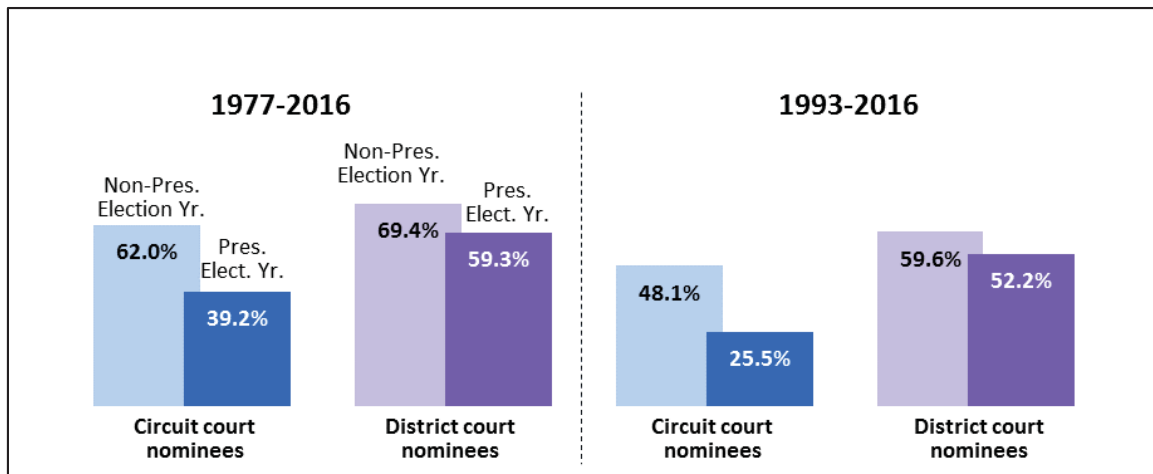
<sup>19</sup> If a U.S. circuit or district court nominee is not confirmed, it does not mean that his or her nomination was rejected in an up-or-down roll call vote by the Senate. Most nominations that are not confirmed by the Senate are either returned to a President under Senate Rule XXXI or withdrawn by a President prior to the nomination being returned. For additional information about judicial nominations that are returned by the Senate or withdrawn by a President, see CRS Report R43762, *The Appointment Process for U.S. Circuit and District Court Nominations: An Overview*, by Barry J. McMillion.

## U.S. Circuit Court Nominees

As shown by **Figure 4**, 62.0% of the U.S. circuit court nominees whose nominations were pending before the Senate during non-presidential election years from 1977 to 2016 were confirmed. During the same period, 39.2% of circuit court nominees whose nominations were pending before the Senate in presidential election years were confirmed.

For the more recent period, 1993 to 2016, 48.1% of the U.S. circuit court nominees whose nominations were pending before the Senate during non-presidential election years were confirmed. In contrast, 25.5% of U.S. circuit court nominees whose nominations were pending before the Senate in presidential election years during the same period were confirmed.

**Figure 4. Average Percentage of Pending U.S. Circuit and District Court Nominees Confirmed by the Senate During Non-Presidential and Presidential Election Years (1977-2016)**



**Source:** Internal CRS judicial nominations database.

## U.S. District Court Nominees

As shown by **Figure 4**, 69.4% of the U.S. circuit district nominees whose nominations were pending before the Senate during non-presidential election years from 1977 to 2016 were confirmed. During the same period, 59.3% of U.S. district court nominees whose nominations were pending before the Senate in presidential election years were confirmed.

For the more recent period, 1993 to 2016, 59.6% of the U.S. district court nominees whose nominations were pending before the Senate during non-presidential election years were confirmed. During the same period, 52.2% of U.S. district court nominees whose nominations were pending before the Senate in presidential election years were confirmed.

## Variation by Year

As with the number of U.S. circuit and district court nominees confirmed during the period 1977 to 2016, the percentage of circuit and district court nominees also varied by year during the same period. **Figures 5 and 6** show, respectively, the percentage of U.S. circuit and district court nominees confirmed during each calendar year from 1977 to 2016.



## U.S. Circuit Court Nominees

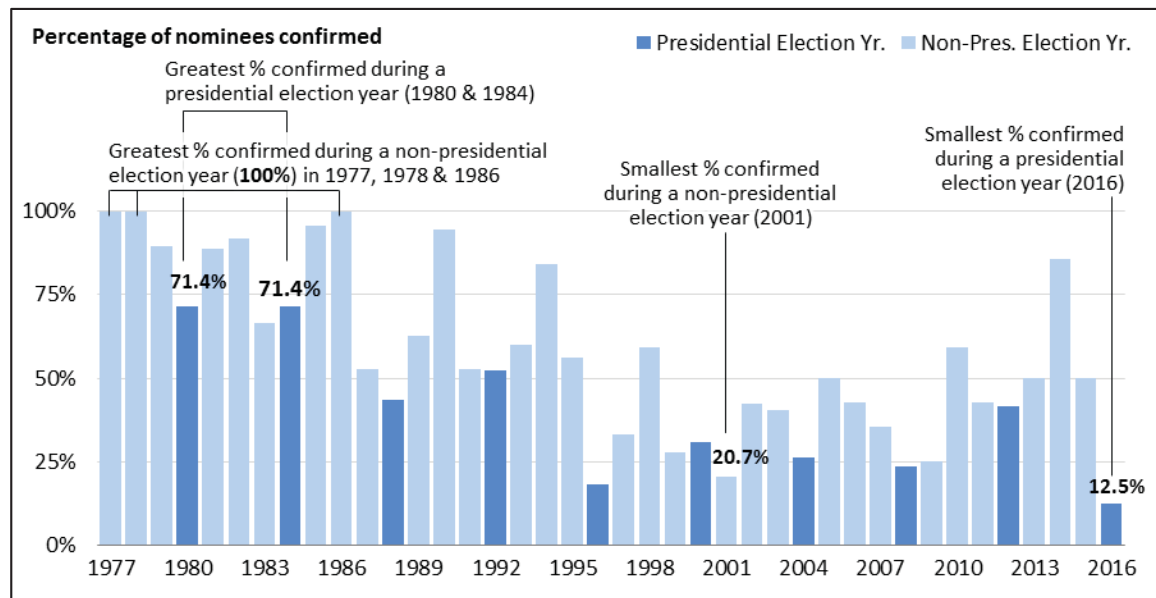
### *Presidential Election Years*

As shown by **Figure 5**, the percentage of U.S. circuit court nominees confirmed during presidential election years ranged from a low of 12.5% in 2016 (during the eighth year of the Obama presidency) to a high of 71.4% in both 1980 and 1984 (during the fourth years of the Carter and Reagan presidencies, respectively).

The second-lowest percentage of circuit court nominees confirmed during a presidential election year was in 1996 (18.2% during the fourth year of the Clinton presidency), whereas the second-greatest percentage of circuit court nominees confirmed was in 1992 (52.4% during the fourth year of the George H.W. Bush presidency).

For presidential election years during the period 1977 to 2016, the specific percentages of U.S. circuit court nominees confirmed each year (in chronological order) were as follows: 1980 (71.4%), 1984 (71.4%), 1988 (43.7%), 1992 (52.4%), 1996 (18.2%), 2000 (30.8%), 2004 (26.3%), 2008 (23.5%), 2012 (41.7%), and 2016 (12.5%).

**Figure 5. Percentage of U.S. Circuit Court Nominees Confirmed by Calendar Year (1977-2016)**



**Source:** Internal CRS judicial nominations database.

### *Other Years*

As shown by the figure, the percentage of U.S. circuit court nominees confirmed during non-presidential election years ranged from a low of 20.7% in 2001 (during the first year of the George W. Bush presidency) to a high of 100% in 1977, 1978, and 1986 (during the first and second years of the Carter presidency and the sixth year of the Reagan presidency, respectively).

The second-lowest percentage of circuit court nominees confirmed during a non-presidential election year was in 2009 (25.0% during the first year of the Obama presidency), whereas the

second-greatest percentage of circuit court nominees confirmed during a non-presidential election year was in 1985 (95.7% during the third year of the Reagan presidency).

For non-presidential election years during the period 1977 to 2016, the specific percentages of U.S. circuit court nominees confirmed each year (in chronological order) were as follows: 1977 (100%), 1978 (100%), 1979 (89.5%), 1981 (88.9%), 1982 (91.7%), 1983 (66.7%), 1985 (95.7%), 1986 (100%), 1987 (52.6%), 1989 (62.5%), 1990 (94.4%), 1991 (52.9%), 1993 (60.0%), 1994 (84.2%), 1995 (56.2%), 1997 (33.3%), 1998 (59.1%), 1999 (28.0%), 2001 (20.7%), 2002 (42.3%), 2003 (40.6%), 2005 (50.0%), 2006 (42.9%), 2007 (35.3%), 2009 (25.0%), 2010 (59.1%), 2011 (42.9%), 2013 (50.0%), 2014 (85.7%), and 2015 (50.0%).

## **U.S. District Court Nominees**

### ***Presidential Election Years***

As shown by **Figure 6**, the percentage of U.S. district court nominees confirmed during presidential election years ranged from a low of 15.7% in 2016 (during the eighth year of the Obama presidency) to a high of 79.1% in 1980 (during the fourth year of the Carter presidency).

The second-lowest percentage of district court nominees confirmed during a presidential election year was in 1996 (46.2% during the fourth year of the Clinton presidency), whereas the second-greatest percentage of district court nominees confirmed during a presidential election year was in 2004 (76.9% during the fourth year of the George W. Bush presidency).

For presidential election years during the period 1977 to 2016, the specific percentages of U.S. district court nominees confirmed during each year (in chronological order) were as follows: 1980 (79.1%), 1984 (71.7%), 1988 (73.3%), 1992 (55.8%), 1996 (46.2%), 2000 (55.4%), 2004 (76.9%), 2008 (54.5%), 2012 (64.7%), and 2016 (15.7%).

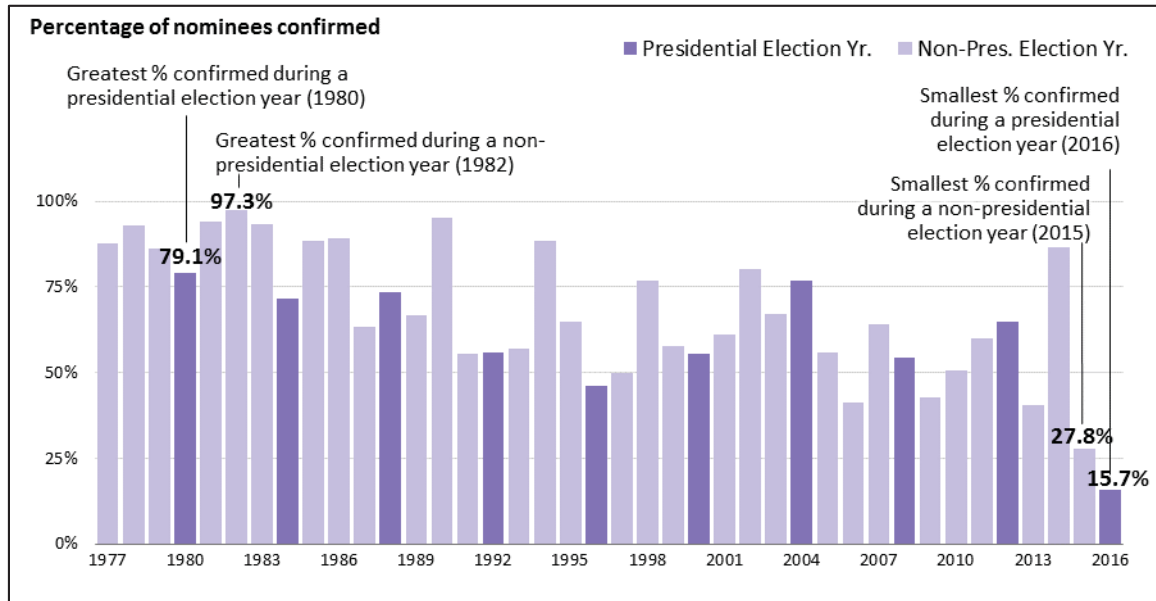
### ***Other Years***

**Figure 6** also shows that the percentage of U.S. district court nominees confirmed during non-presidential election years ranged from a low of 27.8% in 2015 (during the seventh year of the Obama presidency) to a high of 97.3% in 1982 (during the second year of the Reagan presidency).

The second-lowest percentage of district court nominees confirmed during non-presidential election years occurred in 2013 (40.5% during the fifth year of the Obama presidency), whereas the second-greatest percentage of district court nominees confirmed during a non-presidential election year was in 1990 (95.0% during the second year of the George H. W. Bush presidency).

For non-presidential election years during the period 1977 to 2016, the specific percentages of U.S. district court nominees confirmed each year (in chronological order) were as follows: 1977 (87.5%), 1978 (93.1%), 1979 (86.3%), 1981 (94.1%), 1982 (97.3%), 1983 (93.3%), 1985 (88.6%), 1986 (89.2%), 1987 (63.5%), 1989 (66.7%), 1990 (95.0%), 1991 (55.3%), 1993 (57.1%), 1994 (88.3%), 1995 (64.7%), 1997 (50.0%), 1998 (76.9%), 1999 (57.8%), 2001 (61.1%), 2002 (80.3%), 2003 (67.1%), 2005 (56.0%), 2006 (41.2%), 2007 (64.2%), 2009 (42.9%), 2010 (50.7%), 2011 (60.0%), 2013 (40.5%), 2014 (86.5%), and 2015 (27.8%).

**Figure 6. Percentage of U.S. District Court Nominees Confirmed by Calendar Year (1977-2016)**



Source: Internal CRS judicial nominations database.

## The Influence of Unified Versus Divided Party Control

As with the number of U.S. circuit and district court nominees confirmed by year during the period 1977 to 2016, the existence of unified or divided party control may have played a role in the percentage of U.S. circuit and district court nominees confirmed by the Senate during the same period.

### U.S. Circuit Court Nominees

During presidential election years in which there was unified party control, the Senate confirmed, on average, 52.7% of pending U.S. circuit court nominees. In contrast, during presidential election years in which there was divided party control, the Senate confirmed, on average, 30.2% of such nominees.

Similarly, during non-presidential election years in which there was unified party control, the Senate confirmed, on average, 70.7% of pending circuit court nominees. In contrast, during non-presidential election years in which there was divided party control, the Senate confirmed, on average, 51.5% of such nominees.

Unified and divided party control does not, however, explain all of the variation in the percentage of U.S. circuit court nominees confirmed each year from 1977 to 2016. For example, 52.4% of pending circuit court nominees were confirmed in 1992 (a year with divided party control), whereas 26.3% and 41.7% of such nominees were confirmed in 2004 and 2012 (both years with unified party control), respectively. Similarly, 59.1% of pending circuit court nominees were confirmed in 1998 (a year with divided party control), whereas 42.9% of such nominees were confirmed in 2011 (a year with unified party control).

## U.S. District Court Nominees

During presidential election years in which there was unified party control, the Senate confirmed, on average, 73.1% of pending district court nominees. In contrast, during presidential election years in which there was divided party control, the Senate confirmed, on average, 50.1% of such nominees.

Similarly, during non-presidential election years in which there was unified party control, the Senate confirmed, on average, 73.3% of pending U.S. district court nominees. In contrast, during non-presidential election years in which there was divided party control, the Senate confirmed, on average, 63.8% of such nominees.

Of the four political contexts (i.e., unified party control during a presidential year, divided party control during a presidential year, unified party control during a non-presidential election year, and divided party control during a non-presidential election year), the Senate confirmed, *on average*, more than 50.0% of the pending district court nominees across the set of years comprising each particular context.<sup>20</sup>

For circuit court nominees, the Senate confirmed, *on average*, fewer than 50.0% of the pending circuit court nominees across the set of presidential election years in which there was divided party control. However, for the other three political contexts (i.e., unified party control during a presidential election year, unified party control during a non-presidential election year, and divided party control during a non-presidential election year), the Senate confirmed, *on average*, more than 50.0% of the pending circuit court nominees across the set of years comprising each particular context.

As with circuit court nominees, unified or divided party control does not explain all of the variation in the percentage of district court nominees confirmed each year from 1977 to 2016. For example, 64.2% of pending district court nominees were confirmed in 2007 (a year with divided party control), whereas 42.9% of such nominees were confirmed in 2009 (a year with unified party control).

## The 2017 to 2020 Period

Because there are current nominations that were submitted by President Trump pending before the Senate, the years of the Trump presidency are not included in the figures above.<sup>21</sup> Some data, however, are available for the past several years.

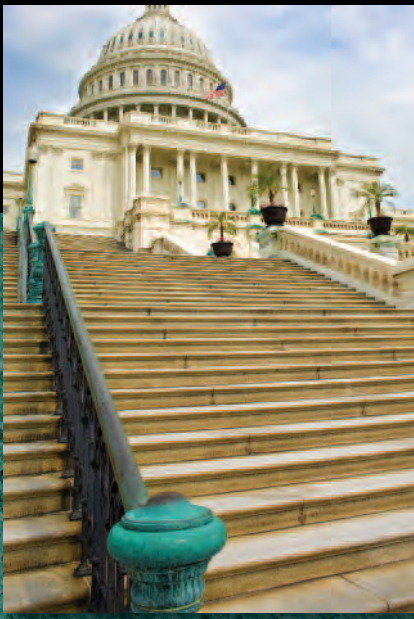
The average percentage of U.S. circuit court judges confirmed across the three years from 2017 through 2019 (three non-presidential election years) was 70.7%. The smallest percentage of nominees confirmed during this three-year period was 58.1% (in 2018 during the second year of the Trump presidency) and the greatest percentage was 90.9% (in 2019 during the third year of the Trump presidency).<sup>22</sup> As of September 18, 2020, 100% of circuit court nominees have been confirmed during the current presidential election year.

<sup>20</sup> For example, during this period the set of years for non-presidential election years in which there was divided party control included 1987, 1989, 1990, 1991, 1995, 1997, 1998, 1999, 2002, 2007, and 2015. Adding the yearly percentages of pending nominees confirmed and dividing that total by the number of years in this category yields the average yearly confirmation percentage.

<sup>21</sup> Data for the period 2017 to 2020 will be incorporated into the figures and accompanying text of this report when it is updated in the future.

<sup>22</sup> In 2017 (the first year of the Trump presidency), 63.2% of pending U.S. circuit court nominees were confirmed.





A Practical Guide to Preparing and Delivering  
Testimony Before Congress and Congressional  
Hearings for Agencies, Associations, Corporations,  
Military, NGOs, and State and Local Officials

By William N. LaForge

# Testifying Before Congress



**TheCapitol!Net**



The average percentage of U.S. district court judges confirmed across the three years from 2017 through 2019 was 43.2%. The smallest percentage of nominees confirmed during this three-year period was 12.2% (in 2017 during the first year of the Trump presidency) and the greatest percentage was 70.8% (in 2019 during the third year of the Trump presidency).<sup>23</sup> As of September 18, 2020, 42.1% of pending district court nominees have been confirmed during the current presidential election year.

## Have U.S. circuit and district court nominees who were *first* nominated during past presidential election years been less likely to be confirmed than nominees who were *first* nominated during other years?

U.S. circuit and district court nominees who are first nominated during either the fourth or eighth year of a presidency—that is, during a presidential election year—were less likely to be confirmed than nominees who were first nominated during the other years of a presidency (with one exception: circuit and district court nominees who were first nominated during the seventh year of a presidency were less likely to be confirmed than such nominees who were first nominated during the fourth year of a presidency).

### U.S. Circuit Court Nominees

**Figure 7** shows, for the period 1977 to 2016, the percentage of U.S. circuit court nominees confirmed by when they were first nominated during a presidency. So, for example, of the combined number of U.S. circuit court nominees who were first nominated during the first calendar years of the Carter, Reagan, George H.W. Bush, Clinton, George W. Bush, and Obama presidencies, 91.8% were ultimately confirmed.<sup>24</sup> Similarly, of the combined number of individuals who were first nominated as U.S. circuit court nominees during the fifth calendar years of the Reagan, Clinton, George W. Bush, and Obama presidencies, 92.2% were confirmed.

Both the fourth and eighth years of a presidency correspond to presidential election years during this period, whereas the remaining years are non-presidential election years.

As shown by **Figure 7**, circuit court nominees who were first nominated during the eighth year of a presidency were the least likely to be confirmed by the Senate (i.e., 17.2% of nominees who were first nominated during a President's eighth year in office were confirmed), whereas circuit court nominees who were first nominated during the fifth year of a presidency were the most likely to be confirmed (92.2% of nominees).

The next two groups of U.S. circuit court nominees who were least likely to be confirmed, based on the year of a presidency when they were first nominated, were nominees who were first

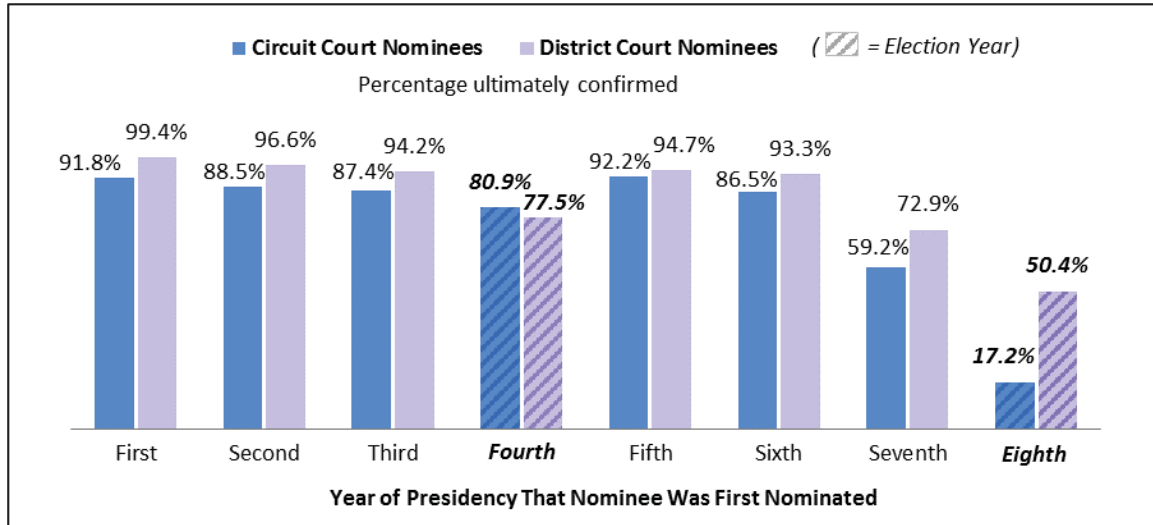
<sup>23</sup> In 2018 (the second year of the Trump presidency), 46.5% of pending U.S. district court nominees were confirmed.

<sup>24</sup> Note that this figure does not mean that 91.8% were confirmed *during* the first calendar years of these six respective presidencies—but that 91.8% of nominees who were first nominated during the presidencies' first calendar years were ultimately confirmed (either during the first year or another year of the same presidency).

nominated during the seventh year of a presidency (59.2% of nominees confirmed) and during the fourth year of a presidency (80.9% confirmed).

**Figure 7. Percentage of U.S. Circuit and District Court Nominees Confirmed by Year of Presidency When Nominee Was First Nominated**

(1977-2016)



Source: Internal CRS judicial nominations database.

## U.S. District Court Nominees

**Figure 7** shows a similar pattern for U.S. district court nominees. Specifically, nominees who were first nominated during the eighth year of a presidency were, for the period 1977 to 2016, the least likely to be confirmed (50.4% of nominees confirmed). The next two groups of U.S. district court nominees who were least likely to be confirmed, based on the year of a presidency when they were first nominated, were nominees who were first nominated during the seventh year of a presidency (72.9% confirmed) and during the fourth year of a presidency (77.5% confirmed).

## Variation by Presidency

There is variation across presidencies as to the percentage of U.S. circuit and district court nominees confirmed by the year they were first nominated during a presidency. For example, of the 17 circuit court nominees who were first nominated during the second year of the Clinton presidency, 100% were ultimately confirmed by the Senate. In contrast, of the 13 circuit court nominees who were first nominated during the second year of the Obama presidency, 62% were ultimately confirmed.

## U.S. Circuit Court Nominees

**Table 1** reports the percentage of U.S. circuit court nominees confirmed by presidency based on when they were first nominated during a presidency.

**Table 1. Percentage of U.S. Circuit Court Nominees Confirmed by Year When First Nominated During a Presidency (1977-2016)**

President	Year First Nominated During Presidency							
	First	Second	Third	Fourth	Fifth	Sixth	Seventh	Eighth
Carter	100%	100%	97.4%	70.0%	n/a	n/a	n/a	n/a
Reagan	100%	90.9%	100%	92.3%	100%	100%	78.9%	28.6%
G.H.W. Bush	100%	93.3%	68.7%	64.3%	n/a	n/a	n/a	n/a
Clinton	100%	100%	76.9%	100%	78.6%	77.8%	52.6%	11.1%
G.W. Bush	79.3%	100%	83.3%	100%	50.0%	78.6%	36.4%	33.3%
Obama	100%	61.5%	92.3%	100%	100%	100%	n/a <sup>a</sup>	0%

**Source:** Congressional Research Service.

**Note:**

- a. There were no U.S. circuit court nominees who were nominated for the first time during the seventh year of the Obama presidency.

As shown by **Table 1**, with the exception of the George W. Bush presidency, 100% of the circuit court nominees who were first nominated during each President's first year in office were ultimately confirmed by the Senate. As also shown by the table, with the exception of the eighth year of the Obama presidency, each President had at least one circuit court nominee confirmed who was first nominated during each particular year of his presidency.<sup>25</sup>

## U.S. District Court Nominees

**Table 2** reports the percentage of U.S. district court nominees confirmed by presidency based on when they were first nominated during a presidency.

**Table 2. Percentage of U.S. District Court Nominees Confirmed by Year When First Nominated During a Presidency (1977-2016)**

President	Year First Nominated During Presidency							
	First	Second	Third	Fourth	Fifth	Sixth	Seventh	Eighth
Carter	100%	92.3%	98.3%	76.5%	n/a	n/a	n/a	n/a
Reagan	100%	100%	96.6%	100%	96.5%	96.7%	90.0%	73.1%
G.H.W. Bush	100%	97.1%	90.4%	40.7%	n/a	n/a	n/a	n/a
Clinton	97.6%	93.4%	87.1%	94.1%	90.5%	88.9%	78.4%	63.2%
G.W. Bush	100%	98.4%	98.6%	100%	100%	87.5%	73.1%	57.7%
Obama	95.2%	98.2%	92.7%	94.5%	94.5%	100%	33.3%	0%

**Source:** Congressional Research Service.

<sup>25</sup> Excluding the seventh year of the Obama presidency, during which there were no U.S. circuit court nominees who were nominated for the first time.



**Table 2** shows that it is not uncommon for 90% or more of a President's district court nominees who were first nominated during any given year of his presidency to have been ultimately confirmed by the Senate. In general, the exceptions to this are the sixth through eighth years of the three most recent presidencies included in the analysis.

### *Comparison of Percentages and Numerical Counts*

Note that the relatively higher or lower percentages reported in **Tables 1** and **2** do not always reflect, respectively, a relatively large or small number of circuit and district court nominees who were ultimately confirmed by the Senate. For example, 100% of the U.S. circuit court nominees who were first nominated during the first year of the Obama presidency were confirmed, whereas 79.3% of circuit court nominees who were first nominated during the first year of the George W. Bush presidency were confirmed. These percentages, however, respectively correspond to 12 and 23 circuit court nominees having been confirmed by the Senate (i.e., President Bush had a smaller percentage of circuit court nominees confirmed but also a greater number of nominees confirmed).

## **The Influence of Unified Versus Divided Party Control**

The presence of unified or divided party control may be a factor in some of the variation across presidencies in the percentage of U.S. circuit and district court nominees confirmed by the year when they were first nominated during a presidency.<sup>26</sup> For example, of circuit court nominees who were first nominated during the third years of the Carter, Reagan, and Obama presidencies (each a year with unified party control), over 90% were ultimately confirmed. In contrast, of circuit court nominees who were first nominated during the third years of the George H.W. Bush and Clinton presidencies (each a year with divided party control), fewer than 80% were confirmed.<sup>27</sup>

### *Presidential Election Years Corresponding to the Fourth and Eighth Years of a Presidency*

As shown by both **Tables 1** and **2**, there is notable variation in the percentage of confirmed U.S. circuit and district court nominees who were first nominated during a presidential election year that corresponded with a President's fourth year in office compared to his eighth year in office.

This difference reflects, in part, the existence of unified or divided party control during these particular years. Specifically, three of the four two-term presidencies listed in the tables featured unified party control during a President's fourth year in office, whereas each of the four two-term presidencies featured divided party control during a President's eighth year in office.

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<sup>26</sup> Note, however, that, with the exception of the one-term Carter and G.H.W. Bush presidencies, each of the two-term presidencies included in the analysis (Reagan, Clinton, G.W. Bush, Obama) experienced both unified and divided party control.

<sup>27</sup> As with other statistics presented in this report, the presence of unified or divided party control likely does not explain all of the variation observed across presidencies since 1977. For example, each of the presidencies listed in **Tables 1** and **2** had divided party control during the eighth year. Of circuit court nominees who were first nominated during the eighth year of a presidency, the percentage who were ultimately confirmed ranged from a low of 0% to a high of 33.3%. Of district court nominees who were first nominated during the eighth year of a presidency, the percentage who were ultimately confirmed ranged from a low of 0% to a high of 73.1%.

## The 2017 to 2020 Period

Because there are nominees who were nominated for the first time prior to President Trump's fourth year in office currently pending before the Senate (as of September 18, 2020), data for these years will be added to a future updated version of this report.

## During which months were the greatest number of U.S. circuit and district court nominees confirmed during past presidential election years?

An examination of the number of U.S. circuit and district court nominations approved by month during the 1980 to 2016 period provides information related to the ebb and flow of confirmation activity on such nominations by the Senate during presidential election years in comparison to other years. Variation from year to year, though, may have also been influenced by other factors such as how long the Senate was in session, whether there was a pending U.S. Supreme Court nomination, and the length of time the Senate devoted to other matters (e.g., legislation or executive branch nominations).

### U.S. Circuit Court Nominees

During the 1977 to 2016 period, the three months during which the greatest aggregate number of U.S. circuit court nominations were confirmed were October (49 nominations), June (42), and September (41). These three months account for 132, or 36.5%, of the 362 circuit court nominations confirmed during this period. Overall, for the 1977 to 2016 period, 160 (or 44.2%) of 362 circuit court nominations confirmed during this period were confirmed during the first half of the calendar year (from January through June) and 202, or 55.8%, were confirmed during the second half of the year (from July through December).

There were, however, notable differences in the confirmation of circuit court nominations by month during presidential election years compared to non-presidential election years (as well as for more recent presidential election years compared to less recent election years).

### Presidential Election Years

As shown by **Figure 8**, for presidential election years from 1980 to 2016, the three months during which the greatest aggregate number of U.S. circuit court nominations were confirmed were during the first half of the calendar year—June (13 nominations), May (11), and February (9). These three months account for 33, or 52.4%, of the 63 circuit court nominations confirmed during presidential election years from 1980 to 2016.

**Figure 8** also distinguishes between two periods—presidential elections from 1980 to 1992 and presidential elections from 1996 to 2016 (these two periods are separated by the dashed line).

During the first four presidential election years in the series (1980 to 1992), there were 16 U.S. circuit court nominations confirmed during the second half of the year, that is, from July to

December (this period, as shown by the figure, included years of both unified and divided party control).<sup>28</sup>

In contrast, for presidential election years from 1996 to 2016, there was one U.S. circuit court nomination confirmed during the second half of the year (this period included years of both unified and divided party control). All other circuit court nominees confirmed during this period were confirmed during the first half of the year (January-June).<sup>29</sup>

Altogether, of the 38 U.S. circuit court nominations confirmed during presidential election years from 1980 to 1992, 22 (57.9%) were confirmed during the first half of the year (January-June) and 16 (42.1%) were confirmed during the second half (July-December).

In contrast, for presidential election years from 1996 to 2016, 24 (96.0%) of 25 nominations were confirmed during the first half of the year (January-June), whereas 1 (4.0%) was confirmed during the second half (July-December).

To the extent that the Senate observed, for one reason or another, a custom or practice of not confirming circuit court nominations after a certain date during a presidential election year (even when such nominations were pending on the *Executive Calendar*), it may be the case that such a custom was more prevalent during the 1996 to 2016 period rather than the entire period from 1980 to 2016.<sup>30</sup>

**Figure 8. U.S. Circuit Court Nominations Confirmed by Month During Presidential Election Years**  
(1980-2016)

Pres. Election Year	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Govt. Type	President	Senate Maj.
1980		2			2	4			1			1	Unified	D	D
1984		1	1			2		1		5			Unified	R	R
1988		2	1	2						2			Divided	R	D
1992		1		1	2	1		3	2	1			Divided	R	D
1996	2												Divided	D	R
2000		2	3		2		1						Divided	D	R
2004					2	3							Unified	R	R
2008				1	1	2							Divided	R	D
2012		1		1	2	1							Unified	D	D
2016	1												Divided	D	R
<b>Total</b>	<b>3</b>	<b>9</b>	<b>5</b>	<b>5</b>	<b>11</b>	<b>13</b>	<b>1</b>	<b>4</b>	<b>3</b>	<b>8</b>	<b>0</b>	<b>1</b>			

**Source:** Congressional Research Service.

<sup>28</sup> Additionally, the confirmation of a circuit court nominee that occurred latest in any calendar year from 1980 to 2016 (i.e., in December 1980) occurred during the 1980-1992 period.

<sup>29</sup> Additionally, the two presidential election years when there were no circuit court nominees confirmed after January of a calendar year (i.e., 1996 and 2016) occurred during the 1996-2016 period.

<sup>30</sup> As noted previously by CRS, “sometimes in recent decades, Senators, without referring to a Thurmond rule for support, have maintained that it is traditional Senate practice to slow down, or stop altogether, the processing of judicial nominations in presidential election years.” See CRS Report RL34615 (August 13, 2008), *Nomination and Confirmation of Lower Federal Court Judges in Presidential Election Years*, by D. Steven Rutkus (copy available to congressional clients from the author of this report upon request).

## Other Years

In contrast, for non-presidential election years during the same period, the three months during which the greatest aggregate number of U.S. circuit court nominations were confirmed were during the second half of the calendar year—October (41 nominations), July (38), and September (38).<sup>31</sup> These three months account for 117, or 39.1%, of the 299 circuit court nominations confirmed during non-presidential election years from 1981 to 2015.

## U.S. District Court Nominees

During the 1977 to 2016 period, the three months during which the greatest aggregate number of U.S. district court nominations were confirmed were the same as for circuit court nominations—October (202 nominations), June (168), and September (162). These three months account for 532, or 36.1%, of the 1,474 district court nominations confirmed during this period. Overall, for the 1977 to 2016 period, 648 (or 44.0%) of 1,474 circuit court nominations confirmed during this period were confirmed during the first half of the calendar year (from January through June) and 826, or 56.0%, were confirmed during the second half of the year (from July through December).

As was the case with circuit court nominations, there were notable differences in the confirmation of district court nominations by month during presidential election years compared to non-presidential election years (as well as for more recent presidential election years compared to less recent election years).

## Presidential Election Years

As shown by **Figure 9**, for presidential election years from 1980 to 2016, the three months during which the greatest aggregate number of U.S. district court nominees were confirmed occurred during the first half of the calendar year—June (60 nominations), May (49), and February (38).<sup>32</sup> These three months account for 147, or 45.0%, of the 327 district court nominations confirmed during presidential election years from 1980 to 2016.

**Figure 9** distinguishes between the same two periods as **Figure 8**, that is, the presidential election years from 1980 to 1992 and from 1996 to 2016 (these two periods are separated by the dashed line).

Of the 172 U.S. district court nominations confirmed during presidential election years from 1980 to 1992, 60 (34.9%) were confirmed during the second half of the calendar year (July-December).<sup>33</sup> For presidential election years from 1996 to 2016, a slightly higher percentage of district court nominations were confirmed during the second half. Of 155 nominations confirmed during presidential election years during this period, 67 (43.2%) were confirmed from July to December.<sup>34</sup>

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<sup>31</sup> The data for non-presidential election years are not included in **Figure 8** but are available to congressional clients from the author upon request.

<sup>32</sup> These were also the same three months during which, for presidential election years from 1980 to 2016, the Senate confirmed the greatest aggregate number of U.S. circuit court nominees.

<sup>33</sup> Conversely, of the 172 district court nominations confirmed during presidential election years from 1980 to 1992, 112, or 65%, were confirmed during the first half of the year (January-June).

<sup>34</sup> Conversely, of the 155 district court nominations confirmed during presidential election years from 1996 to 2016, 88, or 57%, were confirmed during the first half of the year (January-June).

**Figure 9. U.S. District Court Nominations Confirmed by Month During Presidential Election Years (1980-2016)**

Pres. Election Year	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Govt. Type	President	Senate Maj.
1980		8		1	18	14		1	11				Unified	D	D
1984		1	6	5	1	8			4	8			Unified	R	R
1988		7	2	6	4		3	2		9			Divided	R	D
1992		14	4	5	6	2		13	4	5			Divided	R	D
1996	1						16	1					Divided	D	R
2000		2			14	7	4			4			Divided	D	R
2004	1	1	2		1	18	1		3		3		Unified	R	R
2008				4		6	4		10				Divided	R	D
2012	1	3	9	3	4	4	3	1	3			13	Unified	D	D
2016	2	2		1	1	1	1						Divided	D	R
<b>Total</b>	<b>5</b>	<b>38</b>	<b>23</b>	<b>25</b>	<b>49</b>	<b>60</b>	<b>32</b>	<b>18</b>	<b>35</b>	<b>26</b>	<b>3</b>	<b>13</b>			

**Source:** Congressional Research Service.

This breakdown for district court nominations is the opposite of what occurred with U.S. circuit court nominations during these same two periods (as discussed above)—that is, a greater percentage of circuit court nominations approved during presidential election years were confirmed from July to December for presidential election years from 1980 to 1992 (42.1%) than for the same period from 1996 to 2000 (4.0%). One possible explanation for this difference is that the Senate, in generally not confirming circuit court nominations from July to December during presidential election years from 1996 to 2016, had more time available to consider or confirm district court nominations during the second half of the year (relative to the 1980 to 1992 period, when the Senate continued to confirm circuit court nominations from July to December).

For both periods (1980 to 1992 and 1996 to 2016), though, a majority of district court nominations confirmed during presidential election years were approved during the first half of the year (January-June)—65.1% for presidential election years from 1980 to 1992 and 56.8% for presidential election years from 1996 to 2016. This was also the case for circuit court nominations, with more than half of such nominations approved during the first half of the year for both periods—57.9% for presidential election years from 1980 to 1992 and 96.0% for presidential election years from 1996 to 2016.

## Other Years

In contrast, for non-presidential election years during the same period, the three months during which the greatest aggregate number of U.S. district court nominees were confirmed were during the second half of the calendar year—October (176 nominations), November (132), and September (127).<sup>35</sup> These three months account for 435, or 37.9%, of the 1,147 district court nominations confirmed during non-presidential election years from 1980 to 2016.

<sup>35</sup> Two of these three months (September and October) were also the same months during which, for presidential election years from 1980 to 2016, the Senate confirmed the greatest aggregate number of U.S. district court nominations. The data for non-presidential election years are not included in **Figure 9** but are available to congressional staff from the author upon request.

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