



**Congressional  
Research Service**

Informing the legislative debate since 1914

---

# Judicial Nomination Statistics and Analysis: U.S. Circuit and District Courts, 1977-2020

Updated May 18, 2021

Congressional Research Service

<https://crsreports.congress.gov>

R45622

# About TheCapitol.Net

We help you understand Washington and Congress.™

For more than 40 years, TheCapitol.Net and its predecessor, Congressional Quarterly Executive Conferences, have been training professionals from government, military, business, and NGOs on the dynamics and operations of the legislative and executive branches and how to work with them.

Our training and publications include congressional operations, legislative and budget process, communication and advocacy, media and public relations, research, testifying before Congress, legislative drafting, critical thinking and writing, and more.

TheCapitol.Net encompasses a dynamic team of more than 150 faculty members and authors, all of whom are independent subject matter experts and veterans in their fields. Faculty and authors include senior government executives, former members of Congress, Hill and agency staff, editors and journalists, lobbyists, lawyers, nonprofit executives, and scholars.

We have worked with hundreds of clients across the country to develop and produce a wide variety of custom training programs, on-site and online. All courses, seminars, and workshops can be tailored to align with your organization's educational objectives and presented online or on-site at your location.

TheCapitol.Net is on the GSA Schedule for custom training:  
GSA Contract GS02F0192X.

TheCapitol.Net has more than 2,500 clients representing congressional offices, federal and state agencies, military branches, corporations, associations, news media, and NGOs nationwide.

TheCapitol.Net is a non-partisan firm.

Our blog: [Hobnob Blog](#)—hit or miss ... give or take ... this or that ...

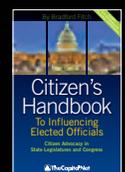
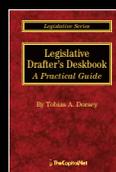


*Non-partisan training and publications that show how Washington works.™*

PO Box 25706, Alexandria, VA 22313-5706  
202-678-1600 • [www.thecapitol.net](http://www.thecapitol.net)



TheCapitol.Net is on the GSA Schedule for custom training.  
GSA Contract GS02F0192X





## **Judicial Nomination Statistics and Analysis: U.S. Circuit and District Courts, 1977-2020**

In recent decades, the process for appointing judges to the U.S. circuit courts of appeals and the U.S. district courts has been of continuing Senate interest. The President and the Senate share responsibility for making these appointments. Pursuant to the Constitution's Appointments Clause, the President nominates persons to fill federal judgeships, with the appointment of each nominee also requiring Senate confirmation. Although not mentioned in the Constitution, an important role is also played midway in the appointment process by the Senate Judiciary Committee.

The statistics presented in this report reflect congressional interest in issues related to the confirmation process for lower federal court nominees. Statistics are provided for each stage of the nomination and confirmation process—from the frequency of judicial vacancies that require a presidential nomination for a judgeship to be filled to the frequency of roll call votes (rather than the use of unanimous consent or voice votes) to confirm judicial nominees. Statistics are also provided related to the length of the confirmation process itself. Additional statistics provided relate to the demographic characteristics of circuit and district court nominees confirmed by the Senate.

The period covered by the report, 1977 through 2020, includes every Administration from the Carter presidency to the Trump presidency. This period also includes every Congress from the 95<sup>th</sup> (1977-1978) through the 116<sup>th</sup> (2019-2020).

This report will be next updated by CRS at the conclusion of the 117<sup>th</sup> Congress.

**R45622**

May 18, 2021

**Barry J. McMillion**  
Analyst in American  
National Government

# Contents

Introduction .....	1
Overview of the U.S. Courts of Appeals and U.S. District Courts.....	2
U.S. Circuit Courts.....	2
U.S. District Courts.....	2
U.S. Circuit and District Court Vacancies .....	3
Number and Percentage of Nominees Confirmed.....	5
By Presidency.....	5
U.S. Circuit Court Nominees .....	5
U.S. District Court Nominees .....	6
By Congress .....	6
U.S. Circuit Court Nominees .....	6
U.S. District Court Nominees .....	7
Influence of Unified and Divided Party Control.....	8
Multiple Nominations of the Same Person Prior to Final Action by the Senate .....	9
U.S. Circuit Court Nominees .....	9
U.S. District Court Nominees .....	10
Nominees Whose Nominations Were Returned at the End of a Congress .....	11
U.S. Circuit Court Nominees .....	11
U.S. District Court Nominees .....	13
Time from Nomination to Confirmation .....	13
By Presidency.....	14
U.S. Circuit Court Nominees .....	14
U.S. District Court Nominees .....	17
By Congress .....	19
U.S. Circuit Court Nominees .....	20
U.S. District Court Nominees .....	20
By Presidency and Congress .....	20
U.S. Circuit Court Nominees .....	21
U.S. District Court Nominees .....	21
Time from Nomination to Committee Hearing .....	22
U.S. Circuit Court Nominees .....	22
U.S. District Court Nominees .....	23
Time from Committee Report to Confirmation.....	24
U.S. Circuit Court Nominees .....	25
U.S. District Court Nominees .....	26
Ratings by the American Bar Association for Confirmed Nominees .....	26
U.S. Circuit Court Nominees .....	27
U.S. District Court Nominees .....	28
Frequency of Roll Call Votes Used to Confirm Nominees.....	28
U.S. Circuit Court Nominees .....	29
U.S. District Court Nominees .....	30
Number of Nay Votes Received at Time of Confirmation .....	31
U.S. Circuit Court Nominees .....	31
U.S. District Court Nominees .....	33

Demographic Characteristics of Confirmed Nominees.....	34
Gender.....	34
U.S. Circuit Court Nominees.....	34
U.S. District Court Nominees.....	35
Race.....	36
U.S. Circuit Court Nominees.....	36
U.S. District Court Nominees.....	38

## Figures

Figure 1. U.S. Circuit Court Nominees: Number of Days from Nomination to Confirmation.....	16
Figure 2. U.S. District Court Nominees: Number of Days from Nomination to Confirmation.....	18
Figure 3. U.S. Circuit and District Court Nominees: Median Number of Days from Nomination to Confirmation, by Presidency and Congress.....	21
Figure 4. U.S. Circuit Court Nominees: Percentage Confirmed by Roll Call Vote.....	29
Figure 5. U.S. District Court Nominees: Percentage Confirmed by Roll Call Vote.....	30
Figure 6. U.S. Circuit and District Court Nominees: Number of Nay Votes Received at Time of Confirmation.....	32
Figure 7. U.S. Circuit Court Nominees: Percentage of Nominees Confirmed, by Gender.....	35
Figure 8. U.S. District Court Nominees: Percentage Confirmed, by Gender.....	36

## Tables

Table 1. Percentage of U.S. Circuit and District Court Judgeships Vacant on January 1 Prior to Beginning of Each Congress and Four-Year Presidential Term.....	3
Table 2. U.S. Circuit and District Court Nominees of Seven Most Recent Presidents: Number Nominated, Number Confirmed, Percentage Confirmed.....	5
Table 3. Nominees to U.S. Circuit and District Court Judgeships During Each Congress: Number Nominated, Number Confirmed, Percentage Confirmed.....	7
Table 4. Number of U.S. Circuit Court Nominees Who Were Nominated Two or More Times Prior to Final Action and Percentage of All Confirmed U.S. Circuit Court Nominees Nominated Two or More Times Prior to Being Confirmed.....	10
Table 5. Number of U.S. District Court Nominees Who Were Nominated Two or More Times Prior to Final Action and Percentage of All Confirmed U.S. District Court Nominees Nominated Two or More Times Prior to Being Confirmed.....	11
Table 6. U.S. Circuit and District Court Nominees: Number Whose Nominations Were Returned at End of Each Congress and the Percentage of All Nominees Whose Nominations Were Returned at End of Each Congress.....	12
Table 7. U.S. Circuit and District Court Nominees: Median Number of Days from Nomination to Confirmation, by Presidency.....	15
Table 8. U.S. Circuit and District Court Nominees: Median Number of Days from Nomination to Confirmation, by Congress.....	19

Table 9. U.S. Circuit and District Court Nominees: Median Number of Days from Nomination to Committee Hearing .....	23
Table 10. U.S. Circuit and District Court Nominees: Median Number of Days from Committee Report to Confirmation.....	25
Table 11. U.S. Circuit and District Court Nominees: Official Ratings by the American Bar Association for Nominees Confirmed by the Senate .....	28
Table 12. U.S. Circuit Court Nominees: Percentage Confirmed, by Race .....	37
Table 13. U.S. District Court Nominees: Percentage Confirmed, by Race .....	38

## **Contacts**

Author Information.....	39
-------------------------	----

## Introduction

Under the Appointments Clause of the Constitution,<sup>1</sup> the President and the Senate share responsibility for making appointments to the Supreme Court, as well as to various lower courts of the federal judiciary. While the President nominates persons to fill federal judgeships, the appointment of each nominee also requires Senate confirmation.<sup>2</sup>

Historically, the vast majority of appointments to federal judgeships (other than to the Supreme Court) have typically not involved much public disagreement between the President and the Senate or between the parties within the Senate.<sup>3</sup> Debate in the Senate over particular lower court nominees, or over the lower court appointment process itself, was uncommon. Typically, such nominations were both reported out of the Judiciary Committee and confirmed by the Senate without any recorded opposition.

In recent decades, however, appointments to two kinds of lower federal courts—the U.S. circuit courts of appeals<sup>4</sup> and the U.S. district courts—have often been the focus of heightened Senate interest and debate, as has the process itself for appointing judges to these courts.<sup>5</sup>

Given congressional interest in the subject, this report provides statistics and analysis related to the nomination and confirmation of U.S. circuit and district court judges from 1977 (the beginning of the Carter presidency) through 2020 (the end of the Trump presidency).<sup>6</sup>

The report's exclusive focus are the U.S. circuit courts of appeals and U.S. district courts. Excluded from the scope of the report are the U.S. Supreme Court; the U.S. Court of International Trade; the U.S. Court of Federal Claims; and territorial district courts (e.g., the District Court of Guam).

---

<sup>1</sup> Article II, Section 2, clause 2 of the Constitution—often referred to as the Appointments Clause—provides that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law....”

<sup>2</sup> The Constitution also, in its Recess Appointments Clause (Article II, Section 2, clause 3), authorizes the President to make temporary appointments unilaterally during periods when the Senate is in recess. This was rarely done, however, during the presidencies discussed in this report. For example, over the past 25 years, “there have been only three recess appointments to fill Article III judgeships”—one such appointment to a circuit court judgeship by President William J. Clinton in 2000 and two to circuit court judgeships by President George W. Bush in 2004. CRS Report RS21308, *Recess Appointments: Frequently Asked Questions*, by Henry B. Hogue.

<sup>3</sup> In this vein, one scholar has noted that, relative to Supreme Court appointments, appointments to the lower federal courts “have not, for most of our history, engaged remotely similar public interest. Nor as a historical matter has the Senate played the same role in considering nominations to those courts.” Stephen B. Burbank, “Politics, Privilege & Power; The Senate’s Role in the Appointment of Federal Judges,” *Judicature*, vol. 86 (July/August 2002), p. 25.

<sup>4</sup> The U.S. courts of appeals are routinely referred to as “circuit courts” throughout the text of this report.

<sup>5</sup> For discussion by scholars of the Senate’s increased interest in the judicial appointment process in recent decades, see Nancy Scherer, *Scoring Points: Politicians, Activists, and the Lower Federal Court Appointment Process* (Stanford, CA: Stanford University Press, 2005), p. 271 (hereinafter cited as Scherer, *Scoring Points*). See also Sarah A. Binder and Forrest Maltzman, *Advice & Dissent: The Struggle to Shape the Federal Judiciary* (Washington: Brookings Institution Press, 2009), p. 198. For two relatively recent forums in which numerous Senators in detailed statements expressed their views concerning the lower court appointment process, see U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts, *The Judicial Nomination and Confirmation Process*, Hearings, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., June 26 and September 4, 2001, S.Hrg. 107-463 (Washington: GPO, 2002), 276 pp.; and U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Constitution, Civil Rights and Property Rights, *Judicial Nominations, Filibusters, and the Constitution: When a Majority Is Denied Its Right to Consent*, Hearing, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., May 6, 2003, S.Hrg. 108-227 (Washington: GPO, 2003), p. 393.

<sup>6</sup> This period includes the 95<sup>th</sup> Congress through the 116<sup>th</sup> Congress.

# Overview of the U.S. Courts of Appeals and U.S. District Courts

## U.S. Circuit Courts

The U.S. courts of appeals, or circuit courts, take appeals from federal district court decisions and are also empowered to review the decisions of many administrative agencies. Cases presented to the courts of appeals are generally considered by judges sitting in three-member panels. Courts within the courts of appeals system are often called “circuit courts” (e.g., the First Circuit Court of Appeals is also referred to as the “First Circuit”), because the nation is divided into 12 geographic circuits, each with a U.S. court of appeals. One additional nationwide circuit, the U.S. Court of Appeals for the Federal Circuit, has specialized subject matter jurisdiction.

Altogether, 179 judgeships for these 13 courts of appeals are currently authorized by law (167 for the 12 regional U.S. courts of appeals and 12 for the U.S. Court of Appeals for the Federal Circuit).<sup>7</sup> The First Circuit (comprising Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico) has the fewest number of authorized appellate court judgeships, 6, while the Ninth Circuit (comprising Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington) has the most, 29.<sup>8</sup>

## U.S. District Courts

U.S. district courts are the federal trial courts of general jurisdiction. There are 91 Article III district courts: 89 in the 50 states, plus 1 in the District of Columbia and 1 more in Puerto Rico. Each state has at least one U.S. district court, while some states (specifically California, New York, and Texas) have as many as four.

Altogether, 673 Article III U.S. district court judgeships are currently authorized by law.<sup>9</sup> Congress has authorized between 1 and 28 judgeships for each district court. The Eastern District of Oklahoma (Muskogee) has 1 authorized judgeship, the smallest number among Article III district courts, while the Southern District of New York (Manhattan) and the Central District of California (Los Angeles) each have 28 judgeships, the most among Article III district courts.<sup>10</sup>

---

<sup>7</sup> The Federal Circuit (which was created in its modern form in 1982 by the Federal Courts Improvement Act, 96 Stat. 25), has nationwide jurisdiction and hears certain specialized legal claims related to international trade, government contracts, patents, trademarks, certain money claims against the U.S. government, federal personnel, veterans’ benefits, and public safety officers’ benefits claims.

<sup>8</sup> The relative number of different judgeships authorized among circuit courts generally reflects the population differences of the geographic areas over which each circuit court exercises jurisdiction. For example, based on 2020 Census Bureau population estimates, the First Circuit has a population of approximately 13.8 million while the Ninth Circuit has a population of 67.1 million.

<sup>9</sup> This total includes 10 temporary judgeships. See the U.S. Courts website at <http://www.uscourts.gov/JudgesAndJudgeships/AuthorizedJudgeships.aspx>.

<sup>10</sup> The relative number of different judgeships authorized among district courts generally reflects the population differences of the geographic areas over which each district court exercises jurisdiction. For example, based on 2020 Census Bureau population estimates, the Eastern District of Oklahoma (Muskogee) has a population of approximately 752,000 while the Central District of California (Los Angeles) has a population of approximately 19.4 million.

# Pocket Constitution



The Declaration of Independence  
The Constitution of the United States  
The Bill of Rights  
Amendments XI–XXVII  
Gettysburg Address



**TheCapitolNet**

TCNFPC.com

## U.S. Circuit and District Court Vacancies

Opportunities for a President to make circuit and district court appointments arise when judgeships are vacant or are scheduled to become vacant. Various factors influence the number of such opportunities a President will have during his tenure in office, including the frequency with which judicial departures occur; whether any new judgeships are statutorily created by Congress (which consequently provide a President with the opportunity to nominate individuals to the new judgeships);<sup>11</sup> the number of judicial nominations submitted by a President; and the speed by which the Senate considers such nominations.

**Table 1** reports the percentage of U.S. circuit and district court judgeships that were vacant on January 1 immediately prior to the beginning of each new Congress and four-year presidential term from 1977 through 2019.<sup>12</sup>

**Table 1. Percentage of U.S. Circuit and District Court Judgeships Vacant on January 1 Prior to Beginning of Each Congress and Four-Year Presidential Term (1977 to 2019)**

Year	Congress	President	Percentage of Judgeships Vacant on January 1	
			U.S. Circuit Courts	U.S. District Courts
1977	95 <sup>th</sup>	Carter	5.2	4.8
1979	96 <sup>th</sup>	Carter	28.8	24.7
1981	97 <sup>th</sup>	Reagan	3.8	5.7
1983	98 <sup>th</sup>	Reagan	3.5	4.5
1985	99 <sup>th</sup>	Reagan	14.9	13.1
1987	100 <sup>th</sup>	Reagan	7.7	7.2
1989	101 <sup>st</sup>	Bush, G.H.W.	6.0	4.7
1991	102 <sup>nd</sup>	Bush, G.H.W.	10.1	16.4
1993	103 <sup>rd</sup>	Clinton	9.5	13.8
1995	104 <sup>th</sup>	Clinton	8.9	8.1
1997	105 <sup>th</sup>	Clinton	12.8	10.0
1999	106 <sup>th</sup>	Clinton	9.5	6.3
2001	107 <sup>th</sup>	Bush, G.W.	14.5	8.2
2003	108 <sup>th</sup>	Bush, G.W.	14.0	5.0
2005	109 <sup>th</sup>	Bush, G.W.	8.4	3.1

<sup>11</sup> The large number of district court vacancies, for example, “inherited” by President Clinton contributed, in turn, to the relatively large number of district court confirmations during his presidency (see **Table 2**). The large number of district court vacancies inherited by President Clinton was, in part, the result of 74 new district court judgeships created by the Federal Judgeship Act of 1990 (P.L. 101-650). Other legislation substantially increasing the number of authorized circuit and district court judgeships was enacted in 1978 (Omnibus Judgeship Act, P.L. 95-486) and in 1984 (Bankruptcy Amendments and Federal Judgeship Act, P.L. 98-353).

<sup>12</sup> The percentage of U.S. circuit and district court judgeships that were vacant is calculated by dividing the number of circuit or district court vacancies that existed on a particular date by the number of authorized circuit or district court judgeships that were authorized on that same date. Note that, over the course of the seven presidencies included in this analysis, the number of authorized circuit court judgeships ranged from 97 to 179. The number of authorized district court judgeships varied from 394 to 673.

Year	Congress	President	Percentage of Judgeships Vacant on January 1	
			U.S. Circuit Courts	U.S. District Courts
2007	110 <sup>th</sup>	Bush, G.W.	8.9	5.9
2009	111 <sup>th</sup>	Obama	7.3	5.9
2011	112 <sup>th</sup>	Obama	8.9	11.7
2013	113 <sup>th</sup>	Obama	8.9	8.8
2015	114 <sup>th</sup>	Obama	3.9	4.9
2017	115 <sup>th</sup>	Trump	9.5	12.8
2019	116 <sup>th</sup>	Trump	6.7	17.6

**Source:** Congressional Research Service.

**Note:** This table shows the percentage of U.S. circuit and district court judgeships that were vacant on January 1 immediately prior to a new Congress convening that same month and prior to a President being inaugurated on January 20.

Overall, during this period, the median percentage of circuit court judgeships that were vacant immediately prior to the start of a new Congress was 8.9%.<sup>13</sup> The median percentage of district court judgeships that were vacant immediately prior to the start of a new Congress was 7.65%.

As shown by the table, the percentage of U.S. circuit judgeships that were vacant was highest at the beginning of the 96<sup>th</sup> Congress,<sup>14</sup> 28.8%, and lowest at the beginning of the 98<sup>th</sup> Congress, 3.5%. The percentage of U.S. district court judgeships that were vacant was also highest at the beginning of the 96<sup>th</sup> Congress, 24.7%, and lowest at the beginning of the 109<sup>th</sup> Congress, 3.1%.

The percentage of judgeships that are vacant at the beginning of a presidency is influenced, in part, by the extent to which the preceding President's nominees were approved by the Senate during the final year or two of his term. For example, at the beginning of the Trump presidency (and the 115<sup>th</sup> Congress), the percentage of U.S. district court judgeships that were vacant was 12.8%. This was due, in part, to the comparatively small number of district court nominations confirmed by the Senate during the final two years of the Obama presidency.<sup>15</sup>

<sup>13</sup> The median is the middle value for a particular set or group of numbers. So, for example, the median percentage of circuit court judgeships that were vacant on January 1 prior to Congresses from 1977 through 2018 is referring to the middle value when considering the entire group of percentages of vacant circuit court judgeships on January 1 during this period. Although the average (also referred to as the mean) is another common measure of central tendency, this report refers most often to the median. The median is less affected by outliers or extreme cases. Consequently, for the purposes of this report, the median may be a better measure of central tendency.

<sup>14</sup> In 1978 Congress passed legislation that increased the number of U.S. circuit court judgeships from 97 to 132 and the number of district court judgeships from 394 to 511 (P.L. 95-486, October 20, 1978). This increased the number of vacancies at the beginning of the 96<sup>th</sup> Congress, as shown by **Table 1**.

<sup>15</sup> Specifically, 18 district court nominations were approved during the 114<sup>th</sup> Congress (while 43 district court nominations were returned to President Obama at the end of the Congress, including 20 nominations that had been pending on the Senate *Executive Calendar*). See CRS Insight IN10570, *U.S. District Court Vacancies at the Beginning and End of the Obama Presidency: Overview and Comparative Analysis*, by Barry J. McMillion (available to congressional staff upon request). Similarly, at the beginning of the Clinton presidency, the percentage of district court judgeships that were vacant was 13.8%. This was due, in part, to the relatively large number of district court nominees whose nominations were returned at the end of the G.H.W. Bush presidency. During the 102<sup>nd</sup> Congress (i.e., the final two years of the G.H.W. Bush presidency), the Senate approved 100 district court nominations and returned 42 at the end of the Congress.

## Number and Percentage of Nominees Confirmed

Various factors influence the number and percentage of judicial nominees confirmed during any given presidency or Congress. These factors include, but are not limited to, the frequency with which judges depart the bench; the speed with which a presidential Administration vets and selects nominees for vacant judgeships; whether a President is of the same political party as the majority party in the Senate; whether a congressional session coincides with a presidential election year; and the point in a congressional session when nominations arrive in the Senate.

### By Presidency

#### U.S. Circuit Court Nominees

As shown by **Table 2**, the number of U.S. circuit court nominees confirmed during a completed presidency ranged from a high of 83 during the Reagan presidency to a low of 42 during the single four-year term of George H. W. Bush. Of two-term Presidents, the high ranged from a high of 83 (Reagan) to a low of 55 during the Obama presidency.

In terms of the percentage of circuit court nominees confirmed during a completed presidency, which takes into account the number of circuit court nominations submitted to the Senate, the greatest percentage of nominees were confirmed during the single four-year term of the Trump presidency (94.7%), and the smallest percentage were confirmed during the George W. Bush presidency (71.8%). Of two-term Presidents, the high ranged from 88.3% during the Reagan presidency to a low of 71.8% (George W. Bush).

**Table 2. U.S. Circuit and District Court Nominees of Seven Most Recent Presidents: Number Nominated, Number Confirmed, Percentage Confirmed**  
(1977 to 2020)

President (Congress, Years)		U.S. Circuit Court Nominees	U.S. District Court Nominees	U.S. Circuit and District Court Nominees (Combined)
Carter (95 <sup>th</sup> -96 <sup>th</sup> , 1977-1980)	N	60	218	278
	C	56	202	258
	%	93.3%	92.7%	92.8%
Reagan (97 <sup>th</sup> -100 <sup>th</sup> , 1981-1988)	N	94	306	400
	C	83	290	373
	%	88.3%	94.8%	93.2%
Bush, G.H.W. (101 <sup>st</sup> -102 <sup>nd</sup> , 1989-1992)	N	53	192	245
	C	42	148	190
	%	79.2%	77.1%	77.6%
Clinton (103 <sup>rd</sup> -106 <sup>th</sup> , 1993-2000)	N	90	350	440
	C	65	305	370
	%	72.2%	87.1%	84.1%
Bush, G.W. (107 <sup>th</sup> -110 <sup>th</sup> , 2001-2008)	N	85	286	371
	C	61	261	322

President (Congresses, Years)		U.S. Circuit Court Nominees	U.S. District Court Nominees	U.S. Circuit and District Court Nominees (Combined)
	%	71.8%	91.3%	86.8%
Obama (111 <sup>th</sup> -114 <sup>th</sup> , 2009-2016)	N	68	322	390
	C	55	268	323
	%	80.9%	83.2%	82.8%
Trump (115 <sup>th</sup> -116 <sup>th</sup> , 2017-2020)	N	57	208	265
	C	54	174	228
	%	94.7%	83.7%	86.0%

**Source:** Congressional Research Service.

**Notes:** This table shows, for each of the past seven Presidents, the number of individuals nominated to U.S. circuit and district court judgeships during his presidency (N); the number confirmed during his presidency (C); and the percentage confirmed (%). Any individual nominated more than once prior to final action is counted only once for the purpose of calculating the overall number and percentage of nominees confirmed during a particular presidency.

## U.S. District Court Nominees

The number of U.S. district court nominees confirmed during a completed presidency ranged from a high of 305 during the Clinton presidency to a low of 148 during the single four-year term of George H. W. Bush. Of two-term Presidents, the high ranged from a high of 305 (Clinton) to a low of 261 during the George W. Bush presidency.

In terms of the percentage of district court nominees confirmed during a completed presidency, which takes into account the number of district court nominations submitted to the Senate, the greatest percentage of nominees were confirmed during the Reagan presidency (94.8%), and the smallest percentage were confirmed during the George H. W. Bush presidency (77.1%). Of two-term Presidents, the high ranged from 94.8% (Reagan) to a low of 83.2% during the Obama presidency.

## By Congress

### U.S. Circuit Court Nominees

The median number of U.S. circuit court nominees confirmed during a Congress, from the 95<sup>th</sup> through the 116<sup>th</sup>, was approximately 18 (while the median number of circuit court nominations submitted to the Senate was 26). And as shown by **Table 3**, the number of U.S. circuit court nominees confirmed during this same period ranged from a low of 2 (during the 114<sup>th</sup> Congress, 2015-2016) to a high of 44 (during the 96<sup>th</sup> Congress, 1979-1980). Recently, the 115<sup>th</sup> Congress (2017-2018) had the third-highest number of circuit court nominees (30) confirmed during a Congress, and the 116<sup>th</sup> Congress (2019-2020) had the fourth-highest number of circuit court nominees (24) confirmed during a Congress.

The median percentage of circuit court nominees confirmed during a Congress, from the 95<sup>th</sup> through the 116<sup>th</sup>, was 66.1%. The smallest percentage of circuit court nominees, 22.2%, were confirmed during the 114<sup>th</sup> Congress (2015-2016). All (100%) of the circuit court nominations submitted to the Senate during the 95<sup>th</sup> and 99<sup>th</sup> Congresses (1977-1978 and 1985-1986, respectively) were confirmed by the Senate. Most recently, the 116<sup>th</sup> Congress (2019-2020) had

the greatest percentage of circuit court nominees confirmed during a Congress since 101<sup>st</sup> Congress (1989-1990).

### U.S. District Court Nominees

The median number of U.S. district court nominees confirmed during a Congress, from the 95<sup>th</sup> through the 116<sup>th</sup>, was 67 (while the median number of district court nominations submitted to the Senate was approximately 90). The number of nominees confirmed ranged from a low of 18 (during the 114<sup>th</sup> Congress, 2015-2016) to a high of 154 (during the 96<sup>th</sup> Congress, 1979-1980). Most recently, the 116<sup>th</sup> Congress (2019-2020) had the second-highest number of district court nominees (121) confirmed during a Congress. The 116<sup>th</sup> Congress also had the greatest number of district court nominees (147) with nominations submitted during a Congress for the 1977-2020 period.

The median percentage of district court nominees confirmed during a Congress, from the 95<sup>th</sup> through the 116<sup>th</sup>, was 83.2%. The smallest percentage confirmed during this period was 29.5% (during the 114<sup>th</sup> Congress, 2015-2016), and the greatest percentage confirmed was 98.6% (during the 97<sup>th</sup> Congress, 1981-1982). Recently, the 115<sup>th</sup> Congress had the second-smallest percentage (47.3%) of district court nominees confirmed during a Congress for the 1977-2020 period. The 114<sup>th</sup> and 115<sup>th</sup> Congresses are the only two Congresses during this period when fewer than half of the district court nominees whose nominations were submitted during a Congress also had their nominations confirmed during that same Congress.

**Table 3. Nominees to U.S. Circuit and District Court Judgeships During Each Congress: Number Nominated, Number Confirmed, Percentage Confirmed**  
(95<sup>th</sup> Congress to 116<sup>th</sup> Congress)

Congress (Years)	U.S. Circuit Court Nominees			U.S. District Court Nominees			U.S. Circuit & District Court Nominees (Combined)		
	# of Nominees	Nominees Confirmed		# of Nominees	Nominees Confirmed		# of Nominees	Nominees Confirmed	
		#	%		#	%		#	%
95 <sup>th</sup> (1977-78)	12	12	100	50	48	96.0	62	60	96.8
96 <sup>th</sup> (1979-80)	48	44	91.7	168	154	91.7	216	198	91.7
97 <sup>th</sup> (1981-82)	20	19	95.0	69	68	98.6	89	87	97.8
98 <sup>th</sup> (1983-84)	19	14	73.7	75	61	81.3	94	75	79.8
99 <sup>th</sup> (1985-86)	33	33	100	100	95	95.0	133	128	96.2
100 <sup>th</sup> (1987-88)	26	17	65.4	78	66	84.6	104	83	79.8
101 <sup>st</sup> (1989-90)	23	22	95.7	50	48	96.0	73	70	95.9
102 <sup>nd</sup> (1991-92)	31	20	64.5	144	100	69.4	175	120	68.6
103 <sup>rd</sup> (1993-94)	22	19	86.4	118	107	90.7	140	126	90.0
104 <sup>th</sup> (1995-96)	20	11	55.0	85	62	72.9	105	73	69.5
105 <sup>th</sup> (1997-98)	30	20	66.7	94	79	84.0	124	99	79.8
106 <sup>th</sup> (1999-00)	34	15	44.1	83	57	68.7	117	72	61.5
107 <sup>th</sup> (2001-02)	32	17	53.1	98	83	84.7	130	100	76.9
108 <sup>th</sup> (2003-04)	34	18	52.9	94	85	90.4	128	103	80.5

Congress (Years)	U.S. Circuit Court Nominees			U.S. District Court Nominees			U.S. Circuit & District Court Nominees (Combined)		
	# of Nominees	Nominees Confirmed		# of Nominees	Nominees Confirmed		# of Nominees	Nominees Confirmed	
		#	%		#	%		#	%
109 <sup>th</sup> (2005-06)	28	16	57.1	65	35	53.8	93	51	54.8
110 <sup>th</sup> (2007-08)	23	10	43.5	79	58	73.4	102	68	66.7
111 <sup>th</sup> (2009-10)	25	16	64.0	78	44	56.4	103	60	58.3
112 <sup>th</sup> (2011-12)	25	14	56.0	127	97	76.4	152	111	73.0
113 <sup>th</sup> (2013-14)	26	23	88.5	123	109	88.6	149	132	88.6
114 <sup>th</sup> (2015-16)	9	2	22.2	61	18	29.5	70	20	28.6
115 <sup>th</sup> (2017-18)	43	30	69.8	112	53	47.3	155	83	53.5
116 <sup>th</sup> (2019-20)	26	24	92.3	147	121	82.3	173	145	83.8

**Source:** Congressional Research Service.

**Notes:** This table shows, for the 95<sup>th</sup> Congress through the 116<sup>th</sup> Congress, the number of individuals nominated to U.S. circuit and district court judgeships during each Congress; the number of nominees confirmed during each Congress (#); and the percentage of nominees confirmed during the same Congress (%). An individual is counted during any Congress for which he or she had a nomination submitted for a particular judgeship. Consequently, if an individual was nominated during more than one Congress prior to final action on his or her nomination, he or she is counted for each Congress during which he or she had a nomination submitted.

## Influence of Unified and Divided Party Control

In general, both a greater number and percentage of circuit and district court nominees were confirmed during Congresses in which the party of the President was the same as the majority party in the Senate.<sup>16</sup> During Congresses in which there was unified party control (i.e., the party of the President and the majority party in the Senate were the same),<sup>17</sup> the median number of circuit court nominees confirmed was 19, and the median percentage of nominees confirmed was 86.4%. In contrast, during Congresses in which there was divided party control (i.e., the party of the President was different than the majority party in the Senate),<sup>18</sup> the median number of circuit court nominees confirmed was 16, and the median percentage of nominees confirmed was 59.8%.

During Congresses in which there was unified party control, the median number of district court nominees confirmed was 85, and the median percentage of nominees confirmed was 88.6%. In contrast, during Congresses in which there was divided party control, the median number of district court nominees confirmed was 60, and the median percentage of nominees confirmed was 73.2%.<sup>19</sup>

<sup>16</sup> This part of the analysis omits the 107<sup>th</sup> Congress (during which the majority party in the Senate changed prior to the end of the Congress).

<sup>17</sup> These Congresses include the 95<sup>th</sup>, 96<sup>th</sup>, 97<sup>th</sup>, 98<sup>th</sup>, 99<sup>th</sup>, 103<sup>rd</sup>, 108<sup>th</sup>, 109<sup>th</sup>, 111<sup>th</sup>, 112<sup>th</sup>, 113<sup>th</sup>, 115<sup>th</sup>, and 116<sup>th</sup>.

<sup>18</sup> These Congresses include the 100<sup>th</sup>, 101<sup>st</sup>, 102<sup>nd</sup>, 104<sup>th</sup>, 105<sup>th</sup>, 106<sup>th</sup>, 110<sup>th</sup>, and 114<sup>th</sup>.

<sup>19</sup> There was also a notable difference in the number of district court nominations *submitted* to the Senate during Congresses in which there was unified or divided party control. During Congresses with unified control the median number of nominations submitted by a President was 100, while during Congresses with divided control the median number of nominations submitted was 81. In contrast, there was not a comparatively large difference in the number of

## Multiple Nominations of the Same Person Prior to Final Action by the Senate

Over the last several presidencies, it has become increasingly common for a President to nominate an individual two or more times to a U.S. circuit or district court judgeship prior to final action on the nomination by the Senate (irrespective of whether the Senate ultimately approved the nomination).<sup>20</sup> Consequently, the percentage of nominees confirmed during a presidency who were nominated two or more times prior to being approved by the Senate has also increased in recent years.

### U.S. Circuit Court Nominees

As shown by **Table 4**, the total number of circuit court nominees who were nominated two or more times prior to final action, whether confirmed or not, ranged from a low of 1 (during the Carter and George H. W. Bush presidencies) to a high of 39 (during the George W. Bush presidency).

The number of circuit court nominees who were nominated more than once and ultimately *confirmed* by the Senate ranged from a low of 0 (during the George H. W. Bush presidency) to a high of 28 (during the George W. Bush presidency). And the number of nominees who were nominated more than once but *not confirmed* by the Senate ranged from a low of 0 (during the Carter presidency) to a high of 11 (during the George W. Bush presidency).

Overall, of the seven presidencies listed in **Table 4**, President George W. Bush had the greatest percentage of confirmed circuit court nominees who were nominated more than once prior to being confirmed by the Senate (45.9%).

During the Obama presidency, the percentage of confirmed circuit court nominees who were nominated more than once prior to being approved by the Senate declined to 36.4% (representing the second-highest percentage of circuit court nominees nominated more than once prior to Senate approval).

More recently, during the Trump presidency, the percentage of confirmed circuit court nominees who were nominated more than once prior to Senate confirmation declined to 33.3% (representing the third-highest percentage of circuit court nominees nominated more than once prior to Senate approval). However, during the Trump presidency, only a single individual was nominated more than once prior to final action and not ultimately confirmed by the Senate (representing the fewest number of such nominees since the George H. W. Bush presidency).

---

circuit court nominations submitted during Congresses with unified or divided control (25 and 26, respectively).

<sup>20</sup> Senate rules provide that “nominations neither confirmed nor rejected during the session at which they are made shall not be acted upon at any succeeding session without being again made to the Senate by the President...” In practice, such nominations, whether for the executive or judicial branch, have sometimes been returned to the President at the end of the first session and are always returned to the President at the end of the Congress. Nominations also may be returned automatically to the President at the beginning of a recess of more than 30 days, but the Senate rule providing for this return has often been waived. See CRS Report R44083, *Appointment and Confirmation of Executive Branch Leadership: An Overview*, by Henry B. Hogue and Maeve P. Carey.

**Table 4. Number of U.S. Circuit Court Nominees Who Were Nominated Two or More Times Prior to Final Action and Percentage of All Confirmed U.S. Circuit Court Nominees Nominated Two or More Times Prior to Being Confirmed**

President	Number of Nominees Nominated Two or More Times Prior To Final Action			Percentage of President's Confirmed Nominees Who Were Nominated Two or More Times Prior to Being Confirmed
	Confirmed	Not Confirmed	Total	
Carter	1	0	1	1.8%
Reagan	6	1	7	7.2%
Bush, G.H.W.	0	1	1	0.0%
Clinton	12	10	22	18.5%
Bush, G.W.	28	11	39	45.9%
Obama	20	5	25	36.4%
Trump	18	1	19	33.3%

**Source:** Congressional Research Service.

**Notes:** This table shows the number of U.S. circuit court nominees who were nominated two or more times prior to final action on their nominations (and whether confirmed or not by the Senate). The table also provides the overall percentage of circuit court nominees who were confirmed during a presidency and nominated two or more times prior to being confirmed by the Senate.

## U.S. District Court Nominees

As shown by **Table 5**, the total number of district court nominees who were nominated two or more times prior to final action ranged from a low of 3 (during the George H. W. Bush presidency) to a high of 111 (during the Obama presidency).

The number of district court nominees who were nominated more than once and ultimately *confirmed* by the Senate ranged from a low of 2 (during the George H. W. Bush presidency) to a high of 104 (during the Obama presidency). And the number of nominees who were nominated more than once but *not confirmed* by the Senate ranged from a low of 1 (during the Carter and George H. W. Bush presidencies) to a high of 13 (during the Trump presidency).

Overall, of the seven presidencies listed in **Table 5**, President Trump had the greatest percentage of confirmed district court nominees who were nominated more than once prior to being confirmed by the Senate (40.8%). This was an increase from the Obama presidency, when 38.8% of district court nominees were nominated more than once prior to being confirmed (which represents the second-highest percentage of district court nominees nominated more than once prior to Senate approval).

**Table 5. Number of U.S. District Court Nominees Who Were Nominated Two or More Times Prior to Final Action and Percentage of All Confirmed U.S. District Court Nominees Nominated Two or More Times Prior to Being Confirmed**

President	Number of Nominees Nominated Two or More Times Prior to Final Action			Percentage of All Confirmed Nominees Who Were Nominated Two or More Times Prior to Being Confirmed
	Confirmed	Not Confirmed	Total	
Carter	4	1	5	2.0%
Reagan	24	2	26	8.3%
Bush, G.H.W.	2	1	3	1.4%
Clinton	21	9	30	6.9%
Bush, G.W.	62	6	68	23.8%
Obama	104	7	111	38.8%
Trump	71	13	84	40.8%

**Source:** Congressional Research Service.

**Notes:** This table shows the number of U.S. district court nominees who were nominated two or more times prior to final action on their nominations (and whether confirmed or not by the Senate). The table also provides the overall percentage of district court nominees who were confirmed during a presidency and nominated two or more times prior to being confirmed by the Senate.

## Nominees Whose Nominations Were Returned at the End of a Congress

Table 6 provides data related to the number of U.S. circuit and district court nominees whose nominations were returned by the Senate to the President at the end of each Congress, from the 95<sup>th</sup> through the 116<sup>th</sup>.<sup>21</sup> The table also indicates how many of these nominees had been given a hearing (or not) by the Judiciary Committee as well as how many had their nominations reported by the committee and pending on the *Executive Calendar* prior to being returned to the President.

For a Congress that did not coincide with the last two years of a presidency, it was not uncommon for a nominee whose nomination was returned at the end of it to be resubmitted during a subsequent Congress and eventually be approved by the Senate.<sup>22</sup> For a Congress, however, that did coincide with the last two years of a presidency, a nominee whose nomination was returned at the end of it was not confirmed by the Senate.

### U.S. Circuit Court Nominees

The median number of U.S. circuit court nominees whose nominations were returned to a President at the end of a Congress during this period was 7, while the median number of district court nominees whose nominations were returned at the end of a Congress was 14. For the 14

<sup>21</sup> These data do not include nominations that were returned to a President at times other than at the end of a Congress or that were withdrawn by a President himself. It also excludes nominations that were rejected by the Senate in up-or-down roll call votes.

<sup>22</sup> For example, each of the 13 district court nominations returned at the end of the 98<sup>th</sup> Congress (1983-1984) was later approved by the Senate during a subsequent Congress. Similarly, 22 of 24 district court nominations returned at the end of the 112<sup>th</sup> Congress (2011-2012) were later approved during a subsequent Congress.



**The House of Representatives and Senate Explained**

# Congressional Procedure

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

**Richard A. Arenberg**

Foreword by Alan S. Frumin

 **TheCapitolNet**

most recent Congresses (corresponding to Congresses during the Clinton, George W. Bush, Obama, and Trump presidencies), the median number of circuit court nominees whose nominations were returned to a President at the end of a Congress was 9, while the median number of district court nominations returned was approximately 21.

No circuit court nominees had nominations returned at the end of the 95<sup>th</sup> Congress (during the Carter presidency) or during the 99<sup>th</sup> Congress (during the Reagan presidency). Most recently, there was one circuit court nomination returned at the end of the 116<sup>th</sup> Congress—this was the fewest number of circuit court nominations returned at the end of a Congress since the 101<sup>st</sup> Congress (1989-1990).

The 106<sup>th</sup> Congress, during the Clinton presidency, had the greatest number of circuit court nominees whose nominations were returned at the end of a Congress (17)—followed by the 107<sup>th</sup> and 108<sup>th</sup> Congresses, both during the George W. Bush presidency, when 15 circuit court nominations were returned at the end of each Congress.

Other than the 95<sup>th</sup> and 99<sup>th</sup> Congresses when there were no circuit court nominations returned at the end of either Congress, the fewest percentage of circuit court nominees who had nominations returned, as a percentage of all nominees who were nominated during a Congress, occurred at the end of the 116<sup>th</sup> Congress during the Trump presidency (when 3.8% of nominations were returned).

The greatest percentage of circuit court nominees who had nominations returned, as a percentage of all nominees who were nominated during a Congress, occurred at the end of the 114<sup>th</sup> Congress during the Obama presidency (seven of nine nominations, or 77.8%, were returned).

**Table 6. U.S. Circuit and District Court Nominees: Number Whose Nominations Were Returned at End of Each Congress and the Percentage of All Nominees Whose Nominations Were Returned at End of Each Congress**  
(95<sup>th</sup> Congress to 116<sup>th</sup> Congress)

Congress (Years)	U.S. Circuit Court Nominees					U.S. District Court Nominees				
	Hearing & Reported	Hearing & Not Reported	No Hearing	Total	% of All Nominees	Hearing & Reported	Hearing & Not Reported	No Hearing	Total	% of All Nominees
95 <sup>th</sup> (1977-78)	0	0	0	0	0.0%	1	0	0	1	2.0%
96 <sup>th</sup> (1979-80)	0	3	1	4	8.3%	0	6	6	12	7.1%
97 <sup>th</sup> (1981-82)	0	0	1	1	5.0%	0	0	1	1	1.4%
98 <sup>th</sup> (1983-84)	1	1	1	3	15.8%	5	3	5	13	17.3%
99 <sup>th</sup> (1985-86)	0	0	0	0	0.0%	0	1	2	3	3.0%
100 <sup>th</sup> (1987-88)	2	0	5	7	26.9%	1	5	3	9	11.5%
101 <sup>st</sup> (1989-90)	0	0	1	1	4.3%	0	0	2	2	4.0%
102 <sup>nd</sup> (1991-92)	0	1	9	10	32.3%	0	0	42	42	29.2%
103 <sup>rd</sup> (1993-94)	0	1	2	3	13.6%	0	2	9	11	9.3%
104 <sup>th</sup> (1995-96)	4	1	3	8	40.0%	3	5	12	20	23.5%
105 <sup>th</sup> (1997-98)	2	1	6	9	30.0%	2	3	6	11	11.7%
106 <sup>th</sup> (1999-00)	0	2	15	17	50.0%	0	2	22	24	28.9%
107 <sup>th</sup> (2001-02)	0	3	12	15	46.9%	0	0	15	15	15.3%

Congress (Years)	U.S. Circuit Court Nominees					U.S. District Court Nominees				
	Hearing & Reported	Hearing & Not Reported	No Hearing	Total	% of All Nominees	Hearing & Reported	Hearing & Not Reported	No Hearing	Total	% of All Nominees
108 <sup>th</sup> (2003-04)	11	3	1	15	44.1%	0	2	6	8	8.5%
109 <sup>th</sup> (2005-06)	0	1	9	10	35.7%	13	1	14	28	43.1%
110 <sup>th</sup> (2007-08)	0	0	10	10	43.5%	0	3	17	20	25.3%
111 <sup>th</sup> (2009-10)	4	0	5	9	36.0%	16	1	17	34	43.6%
112 <sup>th</sup> (2011-12)	4	0	3	7	28.0%	6	4	14	24	18.9%
113 <sup>th</sup> (2013-14)	0	0	2	2	7.7%	0	1	10	11	8.9%
114 <sup>th</sup> (2015-16)	2	1	4	7	77.8%	18	10	15	43	70.5%
115 <sup>th</sup> (2017-18)	0	6	6	12	27.9%	31	17	8	56	50.0%
116 <sup>th</sup> (2019-20)	0	1	0	1	3.8%	3	0	18	21	14.3%

**Source:** Congressional Research Service.

**Notes:** This table shows, for the 95<sup>th</sup> Congress through the 116<sup>th</sup> Congress, the number of nominees whose nominations were returned at the end of a Congress (as well as how many of the nominees had received a Judiciary Committee hearing, or not, and how many had their nominations reported by the committee).

## U.S. District Court Nominees

A single district court nominee had a nomination returned at the end of each of the 95<sup>th</sup> and 97<sup>th</sup> Congresses during the Carter and Reagan presidencies, respectively.

The 115<sup>th</sup> Congress had the greatest number of district court nominees whose nominations were returned at the end of a Congress (56).

The smallest percentage of district court nominees who had nominations returned, as a percentage of all nominees who were nominated during a Congress, occurred at the end of the 97<sup>th</sup> Congress, 1981-1982, during the Reagan presidency (1 of 69, or 1.4%, were returned).

The greatest percentage of district court nominees who had nominations returned, as a percentage of all nominees who were nominated during a Congress, occurred at the end of the 114<sup>th</sup> Congress, 2015-2016, during the Obama presidency (43 of 61 nominations, or 70.5%, were returned).

Note that **Table 6** does not indicate when, during a Congress, a President submitted nominations to the Senate. If nominations are submitted for the first time relatively late in a Congress, it may not give the Senate adequate time to act on them prior to adjournment.

## Time from Nomination to Confirmation

This section provides, for nominees confirmed by the Senate from 1977 through 2020, the median number of days from nomination to confirmation by presidency and by Congress.<sup>23</sup> In general,

<sup>23</sup> Excluded from the analysis are unsuccessful nominations that were not approved by the Senate. These nominations are excluded because most of a President's nominees are approved by the Senate and, consequently, provide a better indication as to whether and how the length of time from nomination to confirmation has changed over time for a typical circuit or district court nominee.

the length of time from when a President nominates an individual to a vacant circuit or district court judgeship to when the Senate approves that nomination has steadily increased, for most nominees, since 1977.<sup>24</sup>

In addition to the general increase in the length of time of the confirmation process itself, an individual nominee might experience a relatively longer period of time from nomination to confirmation due to opposition to the nomination by the nonpresidential party in the Senate; committee and floor scheduling decisions unrelated to partisan opposition to the nomination; and delays in receiving requested background information from the nominee.<sup>25</sup>

## By Presidency

### U.S. Circuit Court Nominees

As shown by **Table 7**, the median number of days from nomination to confirmation for U.S. circuit court nominees ranged from a low of 45.0 days during the Reagan presidency to a high of 229.0 days during the Obama presidency.

Following the Reagan presidency, the median number of days from nomination to confirmation increased during each successive presidency with the recent exception of the Trump presidency—increasing by 176% from 83 days during the George H. W. Bush presidency to 229 days during the Obama presidency, and then declining by 42% to 133.5 days during the Trump presidency. The decline from the Obama to the Trump presidencies in the median number of days from nomination to confirmation for U.S. circuit court nominations likely reflects the prioritization of processing circuit court nominations during the 116<sup>th</sup> Congress.<sup>26</sup>

If the average, rather than the median, is used to measure the length of time a President’s circuit court nominees waited from nomination to confirmation,<sup>27</sup> the average number of days from

---

<sup>24</sup> If a nominee was nominated more than once by a President, prior to the nominee’s eventual confirmation by the Senate, the first date on which he or she was nominated was used to calculate the days elapsed from nomination to confirmation.

<sup>25</sup> There may be several consequences to the relatively longer waiting times from nomination to confirmation experienced by many judicial nominees, including an increase in the vacancy rates of circuit and district court judgeships; detrimental effects on judicial administration, such as caseload management; fewer highly qualified nominees who are willing to undergo a more lengthy, and potentially more combative, confirmation process; and an excessive emphasis on the ideological or partisan predisposition of nominees. For further discussion of these factors, see CRS Report R43316, *Length of Time from Nomination to Confirmation for U.S. Circuit and District Court Nominees: Overview and Policy Options to Shorten the Process*, by Barry J. McMillion.

<sup>26</sup> The prioritization given to the processing of circuit court nominations was likely facilitated in part by the earlier reinterpretation of Senate Rule XXII during the 113<sup>th</sup> Congress to allow cloture to be invoked on most nominations by a majority of Senators voting (a quorum being present), as well as by the change surrounding the Senate Judiciary Committee’s blue slip policy for circuit court nominees during the first year of the Trump presidency itself. This change permitted the Judiciary Committee to consider circuit court nominees whose nominations lacked the support from one or both of their home state Senators. See *Congressional Record*, daily edition, vol. 159 (November 21, 2013), pp. S8417-S8418; CRS Report R43331, *Majority Cloture for Nominations: Implications and the “Nuclear” Proceedings of November 21, 2013*, by Valerie Heitshusen; and see Sen. Chuck Grassley, *Congressional Record*, daily edition, vol. 163 (November 16, 2017), pp. S7285-S7287. See also Joseph P. Williams, “Sen. Grassley Opts to Ignore Blue Slips Against Trump Judicial Nominees,” *U.S. News & World Report*, November 16, 2017, at <https://www.usnews.com/news/politics/articles/2017-11-16/sen-grassley-opts-to-ignore-blue-slips-against-trump-judicial-nominees>.

<sup>27</sup> The average number of days from nomination to confirmation increases, relative to the median number of days from nomination to confirmation, because during each presidency there are nominees whose wait times from nomination to confirmation were particularly long relative to a President’s other nominees who were confirmed by the Senate. The

nomination to confirmation for completed presidencies ranged from a low of 68.7 days during the Reagan presidency to a high of 350.6 days during the George W. Bush presidency.<sup>28</sup>

**Table 7. U.S. Circuit and District Court Nominees: Median Number of Days from Nomination to Confirmation, by Presidency (1977 to 2020)**

President	Circuit Court Nominees		District Court Nominees	
	Number Confirmed	Median # of Days from Nomination to Confirmation	Number Confirmed	Median # of Days from Nomination to Confirmation
Carter	56	62.5	202	56.5
Reagan	83	45.0	290	41.0
G.H.W. Bush	42	83.0	148	93.0
Clinton	65	139.0	305	99.0
G.W. Bush	61	216.0	261	141.0
Obama	55	229.0	268	215.0
Trump	54	133.5	174	236.5

**Source:** Congressional Research Service.

**Note:** This table shows the median number of days from nomination to confirmation for U.S. circuit and district court nominees whose nominations were approved by the Senate from 1977 through 2020.

**Figure 1** shows, for each U.S. circuit court nominee who was confirmed from 1977 through 2020, the number of days from when that individual was first nominated to when he or she was confirmed by the Senate. The particular circuit court nominee who waited the longest period of time from nomination to confirmation is also labeled for each presidency.<sup>29</sup>

### *365 or More Days from Nomination to Confirmation*

As shown by the figure, there was a notable increase from the Clinton presidency through the Obama presidency in the number of nominees who waited one year or more from nomination to confirmation. During the Carter, Reagan, George H. W. Bush, and Trump presidencies, no circuit court nominees waited 365 days or more to be confirmed.

During the Clinton presidency, there were 12 circuit court nominees who waited one year or more to be confirmed. The number of circuit court nominees who waited at least 365 days to be confirmed increased further, to a high of 18, during the George W. Bush presidency. During the

---

nominees with relatively long wait times are outliers in the sense of having the effect of “skewing” or increasing the average wait time from nomination to confirmation. The median number of days from nomination to confirmation, however, is less affected by these extreme cases and represents a measure of time from nomination to confirmation that was more typical for a President’s nominees.

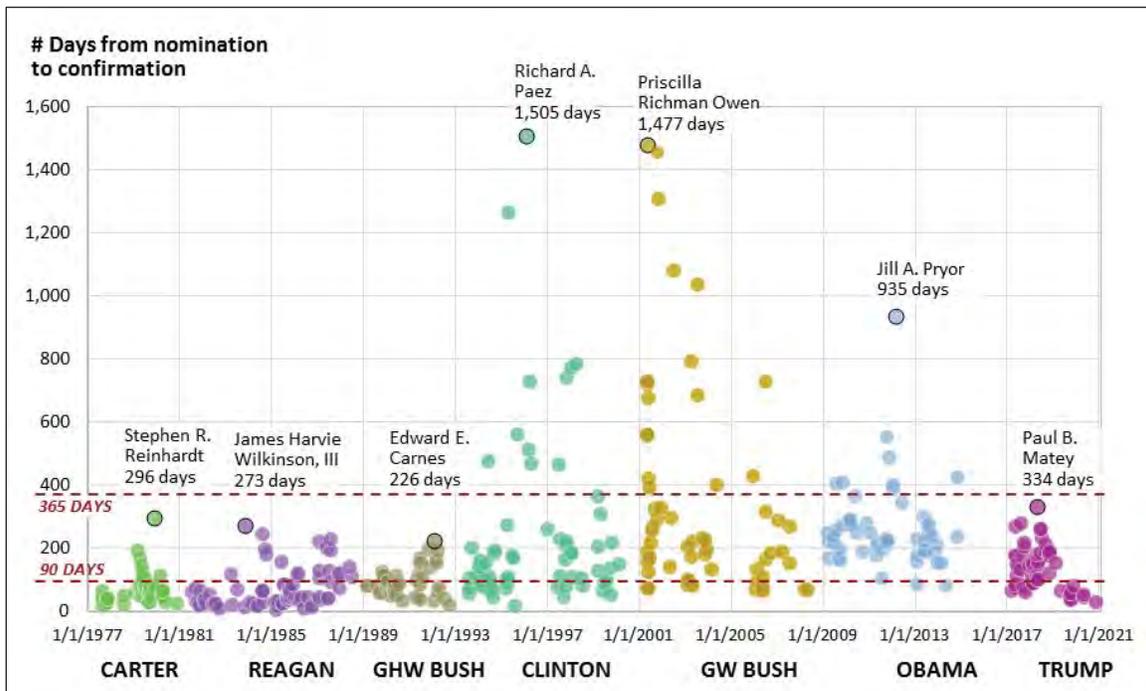
<sup>28</sup> The average number of days from nomination to confirmation for U.S. circuit court nominees was 238.2 days during the Clinton presidency, 260.2 days for the Obama presidency, and 134.8 days for the Trump presidency.

<sup>29</sup> As shown by the figure, the circuit court nominee who experienced the longest period of time from nomination to confirmation across all seven presidencies was Richard A. Paez, who waited 1,505 days, or approximately four years, to be confirmed after being nominated by President Clinton. The circuit court nominee with the second-longest period of time from nomination to confirmation was Priscilla R. Owen, who waited 1,477 days (also approximately four years) to be confirmed after being nominated by President G.W. Bush.

Obama presidency, there were 8 circuit court nominees who waited at least one year to be confirmed.

Overall, 18% of President Clinton’s circuit court nominees waited at least 365 days to be confirmed, 30% of President George W. Bush’s nominees waited at least this long (the highest among the seven presidencies), and 15% of President Obama’s nominees waited at least 365 days.

**Figure 1. U.S. Circuit Court Nominees: Number of Days from Nomination to Confirmation**  
(1977 to 2020)



**Source:** Congressional Research Service.

**Notes:** This figure shows the number of days from nomination to confirmation for U.S. circuit court nominees whose nominations were approved by the Senate from 1977 through 2020. For each presidency, the circuit court nominee who waited the longest from nomination to confirmation is labeled in the figure.

**90 or Fewer Days from Nomination to Confirmation**

During the Carter and Reagan presidencies, 47 and 63 circuit court nominees, respectively, waited 90 or fewer days from nomination to confirmation (i.e., were confirmed within approximately three months). During the George H. W. Bush presidency, 24 circuit court nominees waited 90 or fewer days to confirmation. President Clinton had 18 circuit court nominees confirmed within 90 days of being nominated, while President George W. Bush had 11 such nominees. President Obama had 2 circuit court nominees confirmed within three months of being nominated (the lowest number among the seven presidencies included in the analysis). More recently, President Trump had 20 circuit court nominations confirmed within 90 days of being nominated.

Overall, 84% of President Carter’s circuit court nominees were confirmed within 90 days of being nominated. During the Reagan presidency, 76% of circuit court nominees were confirmed

within 90 days of nomination, while during the George H. W. Bush presidency 57% of circuit court nominees were confirmed within this time frame.

During the Clinton presidency, the percentage of circuit court nominees approved by the Senate within 90 days fell below half of all circuit court nominees confirmed (to 26%). The percentage of nominees confirmed in 90 or fewer days decreased further during both the George W. Bush presidency (to 16%) and the Obama presidency (to 4%, the lowest percentage among the six completed presidencies). During the Trump presidency, 37% of confirmed circuit court nominees were confirmed within 90 days of being nominated.

## U.S. District Court Nominees

As shown by **Table 7**, the median number of days from nomination to confirmation for U.S. district court nominees ranged from a low of 41.0 days during the Reagan presidency to a high of 236.5 days during the Trump presidency.

Following the Reagan presidency, the median number of days from nomination to confirmation increased during each successive completed presidency, increasing by 154% from 93.0 days during the George H. W. Bush presidency to 236.5 days during the Trump presidency.<sup>30</sup>

**Figure 2** shows, for each U.S. district court nominee who was confirmed from 1977 through 2020, the number of days from when that individual was first nominated to when he or she was confirmed by the Senate. The particular district court nominee who waited the longest period of time from nomination to confirmation is also labeled for each presidency.<sup>31</sup>

### *365 or More Days from Nomination to Confirmation*

As shown by the figure, there was a notable increase after the George H. W. Bush presidency in the number of nominees who waited one year or more from nomination to confirmation. During the Carter and Reagan presidencies, a combined total of five district court nominees waited 365 days or more to be confirmed.<sup>32</sup> No district court nominees during the George H. W. Bush presidency waited 365 or more days from nomination to confirmation.

During the Clinton presidency, there were 14 district court nominees who waited one year or more to be confirmed. The number of district court nominees who waited at least 365 days to be confirmed increased further, to a high of 17, during the George W. Bush presidency. During the Obama presidency, there were 16 district court nominees who waited at least 365 days to be confirmed (which was the second highest among the seven presidencies). Most recently, during the Trump presidency, 44 district court nominees waited at least 365 days from nomination to confirmation (this was the highest for the same presidencies).

Overall, 5% of President Clinton's district court nominees waited at least 365 days from nomination to confirmation, 7% of President George W. Bush's nominees waited at least this

---

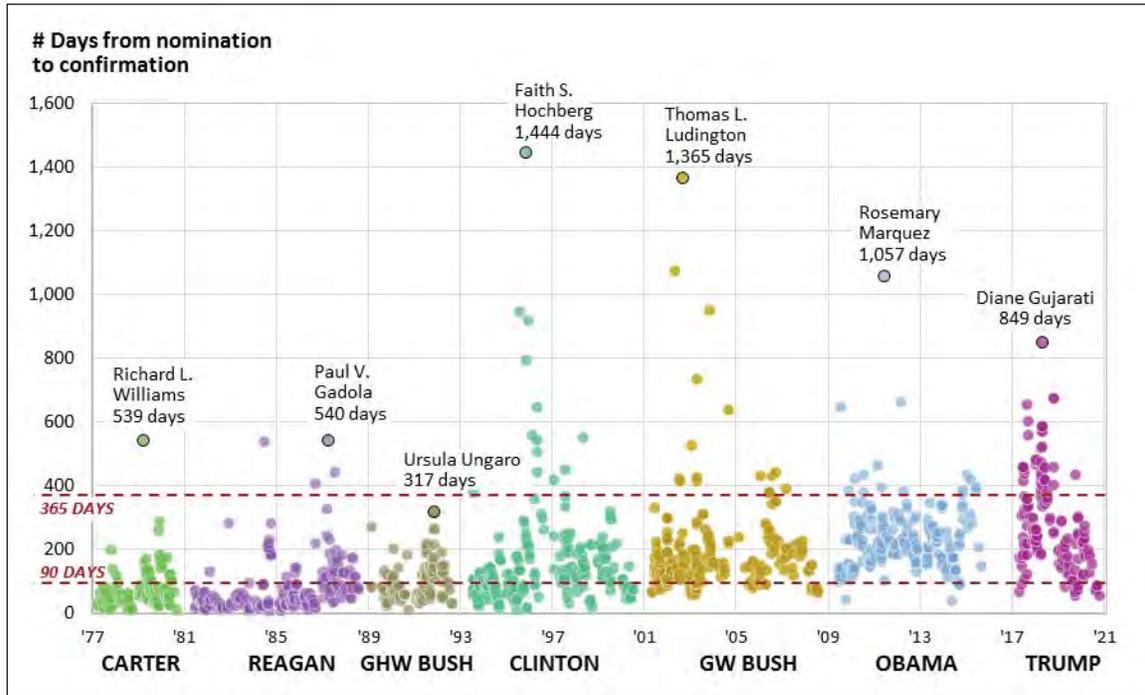
<sup>30</sup> The *average* wait time from nomination to confirmation for U.S. district court nominees was 67.5 days (Reagan); 70.5 days (Carter); 103.0 days (G.H.W. Bush); 135.6 days (Clinton); 178.0 days (G.W. Bush); 224.9 days (Obama); and 275.7 days (Trump).

<sup>31</sup> As shown by the figure, the district court nominee who experienced the longest period of time from nomination to confirmation (across all seven presidencies) was Faith S. Hochberg, who waited 1,444 days, or nearly four years, to be confirmed after being nominated by President Clinton. The district court nominee who waited the second-longest period of time from nomination to confirmation was Thomas L. Ludington, who waited 1,365 days (or approximately 3.7 years) to be confirmed after being nominated by President G.W. Bush.

<sup>32</sup> One district court nominee during the Carter presidency waited 365 or more days from nomination to confirmation, while four nominees during the Reagan presidency waited this long.

long, 6% of President Obama’s nominees waited at least this long, and 25% of President Trump’s nominees waited at least 365 days to be confirmed.

**Figure 2. U.S. District Court Nominees: Number of Days from Nomination to Confirmation (1977 to 2020)**



**Source:** Congressional Research Service.

**Notes:** This figure shows the number of days from nomination to confirmation for U.S. district court nominees whose nominations were approved by the Senate from 1977 through 2020. For each presidency, the district court nominee who waited the longest from nomination to confirmation is labeled in the figure.

### *90 or Fewer Days from Nomination to Confirmation*

During the Carter and Reagan presidencies, 157 and 234 district court nominees, respectively, waited 90 or fewer days from nomination to confirmation. During the George H. W. Bush presidency, 72 district court nominees waited 90 or fewer days to confirmation. President Clinton had 129 district court nominees confirmed within 90 days (i.e., within approximately three months) of being nominated, while President George W. Bush had 41 such nominees. President Obama had five district court nominees, the fewest of the seven presidencies, confirmed within three months of being nominated. Most recently, President Trump had 15 district court nominees confirmed within 90 or fewer days of being nominated.

Overall, 78% of President Carter’s district court nominees were confirmed within 90 days of being nominated. During the Reagan presidency, 81% of district court nominees were confirmed within 90 days of nomination, while during the George H. W. Bush presidency 49% of district nominees were confirmed within this time frame.

During the Clinton and George W. Bush presidencies, the percentage of district court nominees approved by the Senate within 90 days declined further to 42% and 16%, respectively. During the Obama presidency, the percentage of nominees confirmed in 90 or fewer days was 2% (the lowest

percentage of the seven presidencies), while 9% of district court nominees during the Trump presidency were confirmed within 90 or fewer days.

## By Congress

**Table 8** reports the median number of days from nomination to confirmation for U.S. circuit and district court nominees whose nominations were approved by the Senate from the 95<sup>th</sup> Congress through the 116<sup>th</sup> Congress.

**Table 8. U.S. Circuit and District Court Nominees: Median Number of Days from Nomination to Confirmation, by Congress**  
(95<sup>th</sup> Congress to 116<sup>th</sup> Congress)

Congress	Years	Circuit Court Nominees		District Court Nominees	
		Number Confirmed	Median Number of Days from Nomination to Confirmation	Number Confirmed	Median Number of Days from Nomination to Confirmation
95 <sup>th</sup>	1977-78	12	29.0	48	37.5
96 <sup>th</sup>	1979-80	44	66.5	154	65.0
97 <sup>th</sup>	1981-82	19	28.0	68	30.0
98 <sup>th</sup>	1983-84	14	46.0	61	26.0
99 <sup>th</sup>	1985-86	33	45.0	95	41.0
100 <sup>th</sup>	1987-88	17	118.0	66	98.0
101 <sup>st</sup>	1989-90	22	79.0	48	72.5
102 <sup>nd</sup>	1991-92	20	102.5	100	118.0
103 <sup>rd</sup>	1993-94	19	99.0	107	78.0
104 <sup>th</sup>	1995-96	11	167.0	62	99.0
105 <sup>th</sup>	1997-98	20	196.5	79	139.0
106 <sup>th</sup>	1999-2000	15	204.0	57	119.0
107 <sup>th</sup>	2001-02	17	256.0	83	126.0
108 <sup>th</sup>	2003-04	18	201.0	85	152.0
109 <sup>th</sup>	2005-06	16	281.5	35	132.0
110 <sup>th</sup>	2007-08	10	228.5	58	199.0
111 <sup>th</sup>	2009-10	16	252.5	44	140.0
112 <sup>th</sup>	2011-12	14	219.0	97	225.0
113 <sup>th</sup>	2013-14	23	229.0	109	203.0
114 <sup>th</sup>	2015-16	2	331.0	18	299.5
115 <sup>th</sup>	2017-18	30	140.5	53	235.0
116 <sup>th</sup>	2019-20	24	100.5	121	238.0

**Source:** Congressional Research Service.

**Note:** This table shows, for the 95<sup>th</sup> Congress through the 116<sup>th</sup> Congress, the number of U.S. circuit and district court nominees confirmed during each Congress and the median number of days from nomination to confirmation.

## U.S. Circuit Court Nominees

For circuit court nominees, the median number of days from nomination to confirmation ranged from a low of 28.0 days during the 97<sup>th</sup> Congress (1981-1982) to a high of 331.0 days during the 114<sup>th</sup> Congress (2015-2016). The second-shortest median number of days from nomination to confirmation was 29.0 days during the 95<sup>th</sup> Congress (1977-1978), while the second-highest median number of days was 281.5 days during the 109<sup>th</sup> Congress (2005-2006).

The median number of days from nomination to confirmation for U.S. circuit court nominees stayed above 200 days from the 106<sup>th</sup> through the 114<sup>th</sup> Congress. In contrast, for the 115<sup>th</sup> Congress, the median number of days from nomination to confirmation (140.5 days, or 4.6 months) fell below 200 days for the first time since the 105<sup>th</sup> Congress (1997-1998). Additionally, the median number of days from nomination to confirmation for the 24 circuit court nominees approved by the Senate during the 116<sup>th</sup> Congress (i.e., 100.5 days) represented the fewest number of days from nomination to confirmation for circuit court nominees since the 103<sup>rd</sup> Congress (1993-1994).

If the average, rather than the median, is used to measure the length of time circuit court nominees waited from nomination to confirmation, the average number of days from nomination to confirmation ranged from a low of 32.6 days during the 95<sup>th</sup> Congress to a high of 562.9 days during the 109<sup>th</sup> Congress. Additionally, the average time from nomination to confirmation for U.S. circuit court nominees increases by more than 30 days, relative to the median, for the 106<sup>th</sup> Congress (to 373.9 days); 105<sup>th</sup> Congress (303.1 days); 108<sup>th</sup> Congress (287.2 days); 113<sup>th</sup> Congress (281.2 days); and 110<sup>th</sup> Congress (268.8 days).<sup>33</sup>

## U.S. District Court Nominees

For U.S. district court nominees, the median number of days from nomination to confirmation ranged from a low of 26 days during the 98<sup>th</sup> Congress (1983-1984) to a high of 299.5 days during the 114<sup>th</sup> Congress (2015-2016). The second-shortest median was 30 days during the 97<sup>th</sup> Congress (1981-1982), while the second-longest median was 238 days during the 116<sup>th</sup> Congress (2019-2020).<sup>34</sup>

The median number of days from nomination to confirmation during the 116<sup>th</sup> Congress was the fifth consecutive Congress for which the median wait time from nomination to confirmation for district court nominees was greater than 200 days. The first Congress during which the median wait time for district court nominees exceeded 200 days was the 112<sup>th</sup> Congress (2011-2012).

## By Presidency and Congress

**Figure 3** displays, by presidency and Congress, the median number of days from nomination to confirmation for U.S. circuit and district court nominees who were confirmed during the 1977 to 2020 period.

---

<sup>33</sup> As discussed above, the average number of days from nomination to confirmation is more greatly affected, relative to the median number of days from nomination to confirmation, by nominees during a presidency or Congress who experienced atypically long wait times from nomination to confirmation. The effect of these relatively long wait times is to increase the overall average time from nomination to confirmation that is reported for all of a President's nominees.

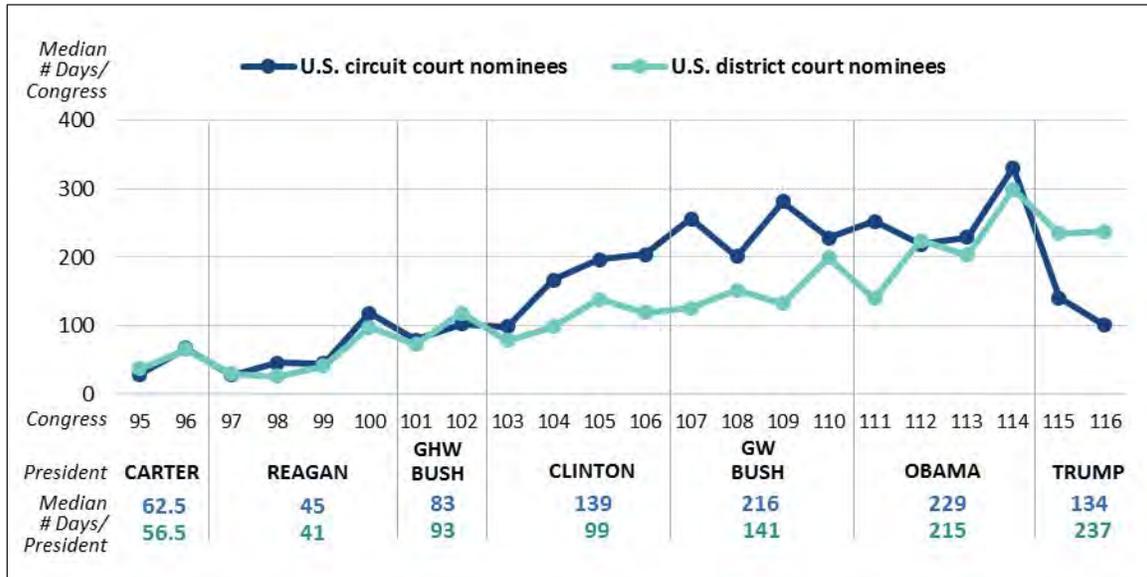
<sup>34</sup> The *average* number of days from nomination to confirmation for U.S. district court nominees during this period ranged from a low of 32.8 days during the 97<sup>th</sup> Congress to a high of 302.1 days during the 114<sup>th</sup> Congress. The second-lowest average wait time for district court nominees occurred during the 98<sup>th</sup> Congress (37.1 days), and the second-longest average wait time occurred during the 116<sup>th</sup> Congress (284.5 days).

## U.S. Circuit Court Nominees

For circuit court nominees, the five greatest increases in the number of median days from nomination to confirmation occurred during the 114<sup>th</sup> Congress (an increase of 102.0 days from the 113<sup>th</sup> Congress); the 109<sup>th</sup> Congress (an increase of 80.5 days from the 108<sup>th</sup> Congress); 100<sup>th</sup> Congress (an increase of 73.0 days from the 99<sup>th</sup> Congress); 104<sup>th</sup> Congress (an increase of 68.0 days from the 103<sup>rd</sup> Congress); and the 107<sup>th</sup> Congress (an increase of 52.0 days from the 106<sup>th</sup> Congress).

Most recently, from the 114<sup>th</sup> to 115<sup>th</sup> Congress, the median number of days from nomination to confirmation for U.S. circuit court nominees declined from 331.0 to 140.5 days<sup>35</sup> and declined further from the 115<sup>th</sup> to 116<sup>th</sup> Congress, from 140.5 to 100.5 days.

**Figure 3. U.S. Circuit and District Court Nominees: Median Number of Days from Nomination to Confirmation, by Presidency and Congress**  
(1977 to 2020)



**Source:** Congressional Research Service.

**Note:** This figure shows the median number of days from nomination to confirmation for U.S. circuit and district court nominees from the 95<sup>th</sup> Congress (Carter presidency) through the 116<sup>th</sup> Congress (Trump presidency).

## U.S. District Court Nominees

For district court nominees, the five greatest increases in the number of median days from nomination to confirmation occurred during the 114<sup>th</sup> Congress (an increase of 96.5 days from the 113<sup>th</sup> Congress); 112<sup>th</sup> Congress (an increase of 85.0 days from the 111<sup>th</sup> Congress); 110<sup>th</sup> Congress (an increase of 67.0 days from the 109<sup>th</sup> Congress); 100<sup>th</sup> Congress (an increase of 57.0 days from the 99<sup>th</sup> Congress); and the 102<sup>nd</sup> Congress (an increase of 45.5 days from the 101<sup>st</sup> Congress).

<sup>35</sup> This was, for this period, the greatest decline in the median number of days from nomination to confirmation for circuit court nominees during two consecutive Congresses.

Most recently, from the 114<sup>th</sup> to 115<sup>th</sup> Congress, the median number of days from nomination to confirmation for U.S. district court nominees declined from 299.5 to 235.0 days<sup>36</sup> and increased slightly, from 235.0 to 238.0 days, during the 116<sup>th</sup> Congress.

## Time from Nomination to Committee Hearing

The President customarily transmits a circuit or district court nomination to the Senate in the form of a written nomination message. Once received, the nomination is numbered by the Senate executive clerk, read on the floor, and then immediately referred to the Judiciary Committee.<sup>37</sup>

The Judiciary Committee’s processing of the nomination typically consists of three phases—a prehearing phase, the holding of a hearing on the nomination, and voting on whether to report the nomination to the Senate.<sup>38</sup> During a hearing on the nomination, lower court nominees engage in a question-and-answer session with members of the Senate Judiciary Committee. The hearing typically is held for more than one judicial nominee at a time.

As shown in **Table 9**, the median length of time from nomination to committee hearing for circuit and district court nominees has varied across presidencies.<sup>39</sup> For individuals nominated during more recent presidencies (with the exception of the Trump presidency), the length of time from nomination to committee hearing has been relatively longer than the median for all nominees from 1977 through 2020.

### U.S. Circuit Court Nominees

Overall, from 1977 through 2020, the median length of time from when an individual was first nominated to a circuit court judgeship to when he or she received a hearing by the Judiciary Committee was 58.0 days (or 1.9 months).<sup>40</sup>

By presidency, the median number of days from nomination to committee hearing for U.S. circuit court nominees ranged from a low of 23.0 days (during the Reagan presidency) to a high of 145.0

---

<sup>36</sup> This was, for this period, the greatest decline in the median number of days from nomination to confirmation for district court nominees during two consecutive Congresses.

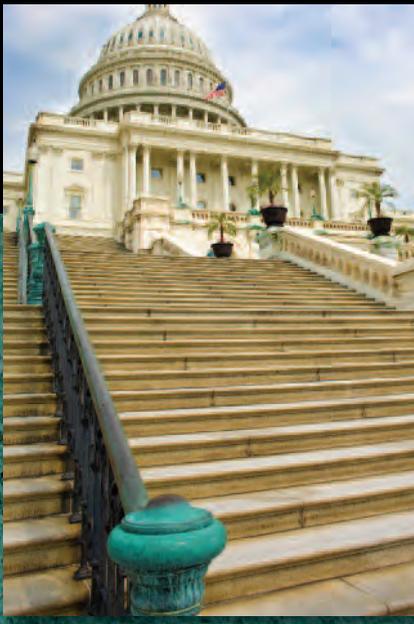
<sup>37</sup> The nomination is referred to the Judiciary Committee in conformance with two Senate rules—specifically Rule XXXI, which provides that nominations shall be referred to appropriate committees “unless otherwise ordered,” and Rule XXV, paragraph 2(m), which outlines the jurisdiction of the Judiciary Committee. See CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki (under heading “Receipt and Referral”).

Senate rules also permit the Senate to discharge the Judiciary Committee from a nomination by unanimous consent or by motion or resolution (although CRS has found no instances, at least going back to the early 1940s, of the Judiciary Committee being discharged of a circuit or district court nomination). For further discussion of this issue, see CRS Report R43762, *The Appointment Process for U.S. Circuit and District Court Nominations: An Overview*, by Barry J. McMillion.

<sup>38</sup> For additional discussion of these three phases, see CRS Report R43762, *The Appointment Process for U.S. Circuit and District Court Nominations: An Overview*, by Barry J. McMillion.

<sup>39</sup> The median length of time has also varied by Congress. These data are not reported for this particular section of the report but are available to congressional staff upon request from the author.

<sup>40</sup> Overall, from 1977 through 2020, the *average* length of time from nomination to committee hearing for U.S. circuit court nominees was 100.5 days. For the relatively rare instance when a circuit court nominee had more than one hearing (during the same presidency), the nominee’s first hearing date is used to calculate the length of time from his or her nomination date to his or her committee hearing—and it is this calculation that is used to determine the average and median for all nominees.



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

days (during the George W. Bush presidency).<sup>41</sup> For the most recent presidency included in the analysis (i.e., the Trump presidency), the median number of days from nomination to committee hearing for U.S. circuit court nominees was 55 days.

**Table 9. U.S. Circuit and District Court Nominees: Median Number of Days from Nomination to Committee Hearing (1977-2020)**

President	Circuit Court Nominees	District Court Nominees
	Median Number of Days from Nomination to Hearing	Median Number of Days from Nomination to Hearing
Carter	39.0	38.0
Reagan	23.0	22.0
G.H.W. Bush	65.5	65.0
Clinton	91.0	68.0
G.W. Bush	145.0	86.0
Obama	76.0	78.0
Trump	55.0	65.0

**Source:** Congressional Research Service.

**Note:** This table shows, by presidency, the median number of days from nomination to hearing for U.S. circuit and district court nominees from 1977 through 2020.

## U.S. District Court Nominees

During this same period, the median length of time from when an individual was nominated to a district court judgeship to when he or she received a hearing was 62.0 days (or approximately 2 months).<sup>42</sup>

The median number of days from nomination to committee hearing for U.S. district court nominees ranged from a low of 22.0 days (during the Reagan presidency) to a high of 86.0 days (during the George W. Bush presidency).<sup>43</sup>

<sup>41</sup> The data provided in **Table 9** include all nominees who received a hearing by the Judiciary Committee (including nominees whose nominations were not eventually approved by the Senate). For the seven presidencies, the *average* number of days from nomination to committee hearing for U.S. circuit court nominees ranged from a low of 42.3 days during the Carter presidency to a high of 246.8 days during the G.W. Bush presidency. The second-shortest average wait time from nomination to hearing for circuit court nominees was during the Reagan presidency (43.1 days), while the second-longest was during the Clinton presidency (120.2 days). During the most recent presidency (i.e., the Trump presidency), the average number of days from nomination to committee hearing for U.S. circuit court nominees was 66.6 days.

<sup>42</sup> Overall, from 1977 through 2020, the *average* length of time from nomination to committee hearing for U.S. district court nominees was 80.7 days. For the relatively rare instance when a district court nominee had more than one hearing (during the same presidency), the nominee’s first hearing date is used to calculate the length of time from his or her nomination date to his or her committee hearing—and it is this calculation that is used to determine the average and median for all nominees.

<sup>43</sup> For the seven presidencies, the *average* number of days from nomination to committee hearing for U.S. district court nominees ranged from a low of 43.2 days during the Reagan presidency to a high of 119.8 days during the G.W. Bush presidency. The second-shortest average wait time from nomination to hearing for district court nominees was during the Carter presidency (50.7 days), while the second-longest was during the Clinton presidency (96.6 days). During the

## Time from Committee Report to Confirmation

After a nominee receives a hearing by the Judiciary Committee, she awaits a vote by the committee on whether her nomination will be reported to the Senate as a whole.<sup>44</sup> If the nomination is not put to the committee for a vote, or if the committee votes against reporting it (i.e., rejects the nomination),<sup>45</sup> the nomination will not move forward, ultimately failing to receive Senate confirmation.

The committee, in reporting a nomination to the Senate as a whole, has three options—to report a nomination favorably, unfavorably, or without recommendation. Almost always, when the committee votes on a nomination, it votes to report favorably. The committee, however, may vote (as it has done in the past, but only on rare occasions) to report unfavorably or without recommendation.<sup>46</sup> Such a vote advances the nomination for Senate consideration despite the lack of majority support for it in committee. After it is reported by the Judiciary Committee, a circuit or district court nomination is listed on the *Executive Calendar* and is eligible for floor consideration.<sup>47</sup>

The nominees who are included in this part of the analysis all had their nominations reported by the Judiciary Committee (i.e., their nominations advanced to the full Senate for consideration) and were confirmed by the Senate.<sup>48</sup>

---

most recent presidency (i.e., the Trump presidency), the average length from nomination to committee hearing for district court nominees was 73.7 days.

<sup>44</sup> Under Senate rules, a judicial nomination pending in the Judiciary Committee could also reach the Senate floor without being reported out of committee—if the Senate agreed to discharge the committee from consideration of the nomination. A CRS report explains that, under Senate Rule XVII, a Senator is allowed “to submit a motion or resolution to discharge a committee from consideration of a nomination. Such a motion or resolution would itself be subject to debate and potentially to a cloture process. The Senate does not, in current practice, employ a discharge procedure in relation to nominations, except in agreeing to unanimous consent to discharge a committee from consideration of a noncontroversial nomination.” CRS Report R43331, *Majority Cloture for Nominations: Implications and the “Nuclear” Proceedings of November 21, 2013*, by Valerie Heitshusen (footnote to text under heading “Other Potential Effects on Presidential Nominations”).

According to another CRS report, it is “fairly common for committees to be discharged from noncontroversial nominations by unanimous consent, with the support of the committee, as a means of simplifying the process.” CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki (under heading “Reporting”).

Nonetheless, in a database search of judicial nominations dating back to the mid-1940s, CRS research has identified no instances in which the Senate has discharged the Judiciary Committee of a judicial nomination.

<sup>45</sup> Usually, a judicial nominee rejected by the Judiciary Committee is not nominated again by the President. However, in some instances, a President has waited until a subsequent Congress to renominate, in the hope of a more favorable outcome in committee for the previously rejected nominee.

<sup>46</sup> The most recent example of the Judiciary Committee voting to report a judicial nomination other than favorably occurred on May 1, 2003. The committee that day approved, by a 10-9 roll call vote, a motion to report without recommendation the nomination of J. Leon Holmes to the U.S. District Court for the Eastern District of Arkansas. Subsequently, on July 6, 2004, the Senate confirmed the nomination by a 51-46 vote. For discussion of this and earlier instances of lower court nominations reported by the Judiciary Committee other than favorably, see CRS Report R40470, *U.S. Circuit and District Court Nominations: Senate Rejections and Committee Votes Other Than to Report Favorably, 1939-2013*, by Barry J. McMillion.

<sup>47</sup> For an in-depth discussion of the floor procedure related to judicial nominations, see CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki; and CRS Report R43762, *The Appointment Process for U.S. Circuit and District Court Nominations: An Overview*, by Barry J. McMillion.

<sup>48</sup> Note, though, that not all nominees who are reported by the Senate Judiciary Committee are ultimately confirmed by

## U.S. Circuit Court Nominees

Overall, from 1977 through 2020, the median length of time from when a U.S. circuit court nominee had his nomination reported by the Judiciary Committee to when he was confirmed by the Senate was 12.0 days.<sup>49</sup>

There was variation across presidencies in how long circuit court nominees waited to be confirmed once their nominations were reported by the Judiciary Committee—with nominees during more recent presidencies waiting longer to be confirmed once their nominations were reported by the committee.<sup>50</sup> Specifically, for presidencies during this period, the median number of days from committee report to confirmation for U.S. circuit court nominees ranged from a low of a single day (during the George H. W. Bush presidency) to a high of 98.0 days (during the Obama presidency).<sup>51</sup> For the most recent presidency included in the analysis (i.e., the Trump presidency), the median number of days from committee report to confirmation for U.S. circuit court nominees was 25.0 days.

**Table 10. U.S. Circuit and District Court Nominees: Median Number of Days from Committee Report to Confirmation**  
(1977-2020)

President	Circuit Court Nominees	District Court Nominees
	Median Number of Days from Committee Report to Confirmation	Median Number of Days from Committee Report to Confirmation
Carter	2.0	2.0
Reagan	4.0	4.0
G.H.W. Bush	1.0	1.0
Clinton	13.0	8.0
G.W. Bush	14.0	19.0
Obama	98.0	84.0
Trump	25.0	110.0

**Source:** Congressional Research Service.

**Note:** This table shows, by presidency, the median number of days from committee report to confirmation for U.S. circuit and district court nominees from 1977 through 2020.

the Senate.

<sup>49</sup> Overall, from 1977 through 2020, the *average* length of time from committee report to confirmation for U.S. circuit court nominees was 32.3 days.

<sup>50</sup> The median length of time has also varied by Congress. These data are not reported for this particular section of the report but are available to congressional staff upon request from the author.

<sup>51</sup> The data provided in **Table 10** include all nominees whose nominations were reported by the Judiciary Committee and confirmed by the Senate. For the seven presidencies, the *average* number of days from committee report to confirmation for U.S. circuit court nominees ranged from a low of 4.9 days during the Carter presidency to a high of 104.4 days during the Obama presidency. The second-shortest average wait time from committee report to confirmation for circuit court nominees was during the G.H.W. Bush presidency (7.8 days), while the second-longest was during the Clinton presidency (39.0 days). During the most recent presidency (i.e., the Trump presidency), the average number of days from committee report to confirmation for U.S. circuit court nominees was 29.5 days.

## U.S. District Court Nominees

Overall, from 1977 through 2020, the median length of time from when a U.S. district court nominee had his nomination reported by the Judiciary Committee to when he was confirmed by the Senate was 12.0 days.<sup>52</sup>

As was the case with circuit court nominees, there was variation across presidencies in how long district court nominees waited to be confirmed once their nominations were reported by the Judiciary Committee.<sup>53</sup> Specifically, for presidencies during this period, the median number of days from committee report to confirmation for U.S. district court nominees ranged from a low of a single day (during the George H. W. Bush presidency) to a high of 110.0 days (during the Trump presidency).<sup>54</sup>

## Ratings by the American Bar Association for Confirmed Nominees

Since 1953, every presidential Administration, except those of George W. Bush, Donald Trump, and Joe Biden, has sought prenomination evaluations of its candidates for district and circuit court judgeships by the American Bar Association (ABA).<sup>55</sup>

The committee that performs this evaluation, the ABA's Standing Committee on the Federal Judiciary, is made up of 15 lawyers with various professional experiences. The stated objective of the committee is to assist the White House in assessing whether prospective judicial nominees should be nominated.<sup>56</sup> It seeks to do so by providing what it describes as an "impartial peer-

---

<sup>52</sup> Overall, from 1977 through 2020, the *average* length of time from committee report to confirmation for U.S. circuit court nominees was 37.8 days.

<sup>53</sup> The median length of time has also varied by Congress. These data are not reported for this particular section of the report but are available to congressional staff upon request from the author.

<sup>54</sup> The data provided in **Table 10** include all nominees whose nominations were reported by the Judiciary Committee and confirmed by the Senate. For the seven presidencies, the *average* number of days from committee report to confirmation for U.S. district court nominees ranged from a low of 4.4 days during the Carter presidency to a high of 112.0 days during the Trump presidency. The second-shortest average wait time from committee report to confirmation for district court nominees was during the G.H.W. Bush presidency (4.6 days), while the second longest was during the Obama presidency (89.8 days).

<sup>55</sup> In 2009, the Obama Administration reinstated the White House practice, discontinued by the previous Administration of George W. Bush, of informing the ABA committee of judicial candidates under consideration and seeking the committee's evaluation of these candidates before making nomination decisions. Bringing the ABA committee investigation back into the prenomination stage, one scholar noted, injected into that stage an "additional 30 to 45 days typically consumed" by an ABA committee investigation of a nominee. Russell Wheeler, "Judicial Nominations in the First 14 Months of the Obama and Bush Administrations," *Governance Studies at Brookings*, April 7, 2010, at [https://www.brookings.edu/wp-content/uploads/2016/06/0407\\_judicial\\_nominations\\_wheeler.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/0407_judicial_nominations_wheeler.pdf). Following the end of the Obama presidency, the Trump Administration adopted the policy of the G.W. Bush Administration of not including the ABA committee investigation in the prenomination stage for judicial nominees. It was announced at the beginning of the Biden presidency that his Administration would also not include the ABA investigation in the prenomination stage. See Debra Cassens Weiss, "Like Trump, Biden asks ABA to start judicial ratings process after nominations are made," *ABA Journal*, February 3, 2021, at <https://www.abajournal.com/news/article/like-trump-biden-asks-aba-to-start-judicial-ratings-process-after-nominations-are-made>.

<sup>56</sup> The ABA committee's explanation of its role and the standards and procedures it uses in rating candidates for lower federal court judgeships is presented in the booklet *American Bar Association Standing Committee on the Federal Judiciary: What It Is and How It Works*, at <http://www.americanbar.org/content/dam/aba/uncategorized/GAO/Backgrounder.authcheckdam.pdf> (hereinafter cited as *ABA Standing Committee; What It Is*).

review evaluation” of each candidate’s professional qualifications. This evaluation, according to the committee, focuses strictly on a candidate’s “integrity, professional competence and judicial temperament” and does not take into account the candidate’s “philosophy, political affiliation or ideology.”<sup>57</sup> In evaluating professional competence, the committee assesses the prospective nominee’s “intellectual capacity, judgment, writing and analytical abilities, knowledge of the law, and breadth of professional experience.”<sup>58</sup>

Following the multistep evaluation process by the committee,<sup>59</sup> a nominee is given an official rating of “well qualified,” “qualified,” or “not qualified.”<sup>60</sup> A rating is provided strictly on an advisory basis; it is solely in the President’s discretion as to how much weight to place on a judicial candidate’s ABA rating in deciding whether to nominate him or her.<sup>61</sup>

## U.S. Circuit Court Nominees

As shown by **Table 11**, for each of the seven presidencies, a majority of a President’s circuit court nominees received a well qualified rating from the ABA. There is, however, some variation across presidencies in the percentage of confirmed U.S. circuit court nominees who received a particular rating by the ABA. For example, the percentage who received a well qualified rating ranged from a low of 56.6% during the Reagan presidency to a high of 80.0% during the Obama presidency.

Six of the seven presidencies listed in the table had no U.S. circuit court nominees rated as not qualified by the ABA. Most recently, the Trump presidency had three circuit court nominees rated as not qualified.<sup>62</sup>

---

<sup>57</sup> *ABA Standing Committee; What It Is*, p. 1.

<sup>58</sup> *ABA Standing Committee; What It Is*, p. 1.

<sup>59</sup> For an in-depth discussion of this process, see CRS Report R43762, *The Appointment Process for U.S. Circuit and District Court Nominations: An Overview*, by Barry J. McMillion.

<sup>60</sup> When the committee vote is not unanimous, it is noted which rating received a majority of the committee’s votes and which rating received a minority, as well as whether the majority and minority votes were or were not “substantial.” *ABA Standing Committee; What It Is*, p. 7. The majority vote is considered by the ABA to be the official rating of the nomination. The official rating is the rating that is used to calculate the data reported in **Table 11**. The data reported in the table do not indicate whether or not that rating was unanimous.

<sup>61</sup> If a President waits to submit a nomination until after he receives notice from the ABA about a potential nominee being rated as not qualified, he might decide not to nominate that individual. Because ABA ratings at this stage of the process are confidential, there is no public information as to how often this might occur during an administration that waits for the ABA to finish its evaluation of a potential nominee prior to submitting a nomination to the Senate.

<sup>62</sup> These nominees were Leonard S. Grasz (confirmed to the Eighth Circuit); Jonathan A. Kobes (also confirmed to the Eighth Circuit); and Lawrence VanDyke (confirmed to the Ninth Circuit). For additional information on these particular nominees, see Don Walton, “American Bar Association defends its negative rating of Nebraska judge nominee,” *Lincoln Journal Star*, November 15, 2017, at [https://journalstar.com/news/state-and-regional/federal-politics/american-bar-association-defends-its-negative-rating-of-nebraska-judge/article\\_cc58f4b1-24be-501f-a671-a93683184ae0.html](https://journalstar.com/news/state-and-regional/federal-politics/american-bar-association-defends-its-negative-rating-of-nebraska-judge/article_cc58f4b1-24be-501f-a671-a93683184ae0.html); Patrick L. Gregory, “ABA Rates Another Trump 8<sup>th</sup> Circuit Nominee ‘Not Qualified,’” *Bloomberg BNA*, September 17, 2018, at <https://www.bna.com/aba-rates-trump-n73014482574>; and Madison Alder and Ellen M. Gilmer, “‘Not Qualified’ Nominee for Ninth Circuit Likely To Be Confirmed,” *Bloomberg Law*, December 11, 2019, at <https://news.bloomberglaw.com/us-law-week/not-qualified-nominee-for-ninth-circuit-likely-to-be-confirmed>.

**Table 11. U.S. Circuit and District Court Nominees: Official Ratings by the American Bar Association for Nominees Confirmed by the Senate**  
(1977-2020)

President	Circuit Court Nominees			District Court Nominees		
	Well Qualified	Qualified	Not Qualified	Well Qualified	Qualified	Not Qualified
Carter <sup>a</sup>	75.0%	25.0%	n/a	51.0%	47.5%	1.5%
Reagan	56.6%	43.4%	n/a	53.8%	46.2%	n/a
G.H.W. Bush	61.9%	38.1%	n/a	57.4%	42.6%	n/a
Clinton	75.4%	24.6%	n/a	58.7%	40.0%	1.3%
G.W. Bush	68.9%	31.1%	n/a	69.3%	29.1%	1.5%
Obama	80.0%	20.0%	n/a	58.6%	41.4%	n/a
Trump	77.8%	16.7%	5.6%	68.4%	28.7%	2.9%

**Source:** Congressional Research Service.

**Notes:** This table shows, for presidencies since 1977, the percentage of confirmed U.S. circuit and district court nominees who received an official rating of “well qualified,” “qualified,” and “not qualified” by the American Bar Association (ABA). For some nominees, the rating received by the ABA is not unanimous. For these nominees, the rating that receives a majority vote by the ABA committee is the nominee’s official rating by the ABA. The official rating is the rating used for the statistics presented in **Table 11**.

- a. During the Carter and Reagan presidencies, the American Bar Association utilized a rating system that also allowed for a rating of “extremely well qualified.” For the purposes of this report, any nominee who received such a rating during this period is included in the percentage of nominees who received a well qualified rating.

## U.S. District Court Nominees

As shown by **Table 11**, a majority of U.S. district court nominees during each of the seven presidencies were rated as well qualified by the ABA. The percentage who received a well qualified rating ranged from a low of 51.0% during the Carter presidency to a high of 69.3% during the George W. Bush presidency.

Four of the seven presidencies had at least one district court nominee rated as not qualified by the ABA. Specifically, during the Carter and George W. Bush presidencies, 1.5% of district court nominees were rated as not qualified; 1.3% of such nominees were rated as not qualified during the Clinton presidency; and 2.9% were rated as not qualified during the Trump presidency.<sup>63</sup>

## Frequency of Roll Call Votes Used to Confirm Nominees

The Senate may confirm nominations by unanimous consent, voice vote, or by recorded roll call vote. When the question of whether to confirm a nomination is put to the Senate, a roll call vote

<sup>63</sup> Of the 202 district court nominees confirmed during the Carter presidency, 3 received a rating of not qualified; of the 261 district court nominees confirmed during the George W. Bush presidency, 4 received a rating of not qualified; of the 305 district court nominees confirmed during the Clinton presidency, 4 received a rating of not qualified; and of the 174 district court nominees confirmed during the Trump presidency, 5 received a rating of not qualified.

will be taken on the nomination if the Senate has ordered “the yeas and nays.” The support of 11 Senators is necessary to order the roll call.<sup>64</sup>

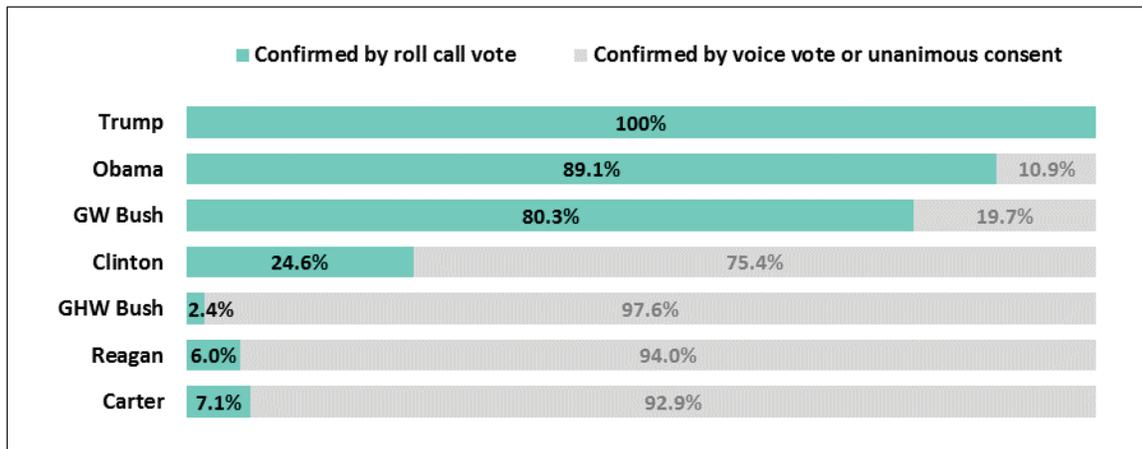
Historically, the Senate confirmed most U.S. circuit and district court nominations by unanimous consent or by voice vote. As shown by **Figure 4** and **Figure 5**, however, using roll call votes to confirm lower federal court nominees has become much more common during recent presidencies.

## U.S. Circuit Court Nominees

A relatively small percentage of circuit court nominees were confirmed by roll call vote during the Carter, Reagan, and George H. W. Bush presidencies. Specifically, 7.1%, 6.0%, and 2.4% of circuit court nominees were confirmed by roll call during each of these three presidencies, respectively.<sup>65</sup>

Confirmation by roll call vote became more common during the Clinton presidency, with nearly one-quarter (24.6%) of circuit court nominees receiving roll call votes at the time of Senate confirmation.<sup>66</sup>

**Figure 4. U.S. Circuit Court Nominees: Percentage Confirmed by Roll Call Vote**  
(by presidency, from 1977 to 2020)



**Source:** Congressional Research Service.

**Note:** This figure shows the percentage of U.S. circuit court nominees confirmed by roll call vote from the Carter presidency through the Trump presidency.

It was not, however, until the George W. Bush presidency that a majority of circuit court nominees were approved using roll call votes, with 80.3% of circuit court nominees being confirmed in this manner.<sup>67</sup> The percentage of circuit court nominees confirmed by roll call vote increased during both the Obama presidency, with 89.1% of circuit court nominees being

<sup>64</sup> One Senator would need to request the roll call, and 10 would need to second the request. See CRS Report RS20199, *Ordering a Roll Call Vote in the Senate*, coordinated by Elizabeth Rybicki.

<sup>65</sup> During the Carter presidency, 4 of 56 U.S. circuit court nominees were confirmed by roll call vote; during the Reagan presidency, 5 of 83 were confirmed by roll call vote; and during the G.H.W. Bush presidency, 1 of 42 circuit court nominees were confirmed by roll call vote.

<sup>66</sup> During the Clinton presidency, 16 of 65 U.S. circuit court nominees were confirmed by roll call vote.

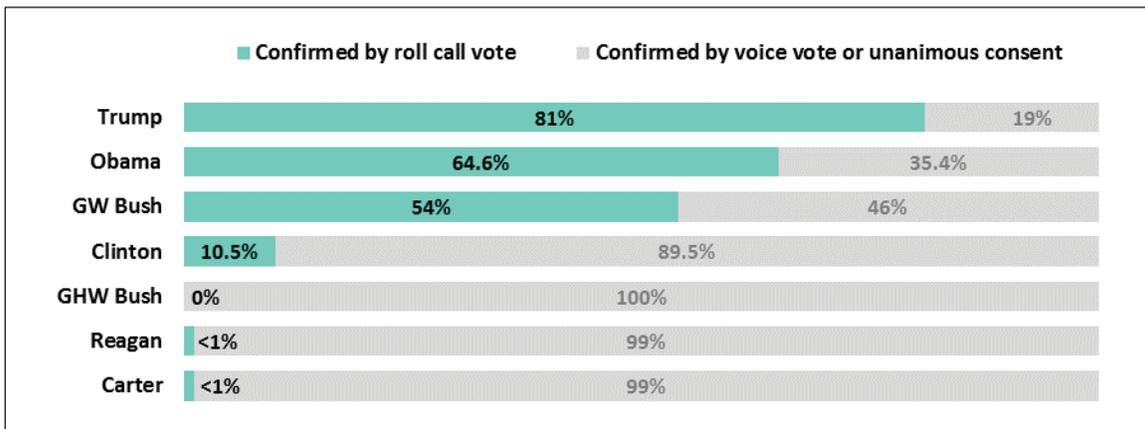
<sup>67</sup> During the G.W. Bush presidency, 49 of 61 circuit court nominees were confirmed by roll call vote.

confirmed by roll call vote,<sup>68</sup> and during the Trump presidency, with all circuit court nominees being confirmed in this manner.<sup>69</sup>

## U.S. District Court Nominees

In contrast to more recent presidencies, one district court nominee was confirmed by roll call vote during each of the Carter and Reagan presidencies. And as shown by **Figure 5**, no district court nominees were confirmed by roll call vote during George H. W. Bush’s presidency (a period characterized entirely by divided party control).

**Figure 5. U.S. District Court Nominees: Percentage Confirmed by Roll Call Vote**  
(by presidency, from 1977 to 2020)



**Source:** Congressional Research Service.

**Note:** This figure shows the percentage of U.S. district court nominees confirmed by roll call vote from the Carter presidency through the Trump presidency.

Confirmation by roll call vote for district court nominees became more common during the Clinton presidency, with 10.5% of district court nominees receiving roll call votes at the time of Senate confirmation.<sup>70</sup>

As was the case with circuit court nominees, the George W. Bush presidency was also the first of the seven presidencies during which a majority of district court nominees were confirmed by roll call vote—specifically, 54.0% of district court nominees were confirmed in this way.<sup>71</sup> The percentage increased further during the Obama presidency, with 64.6% of district court nominees confirmed by roll call vote, and during the Trump presidency, with 81.0% of district court nominees confirmed by roll call vote.<sup>72</sup>

The increase in the number and percentage of U.S. circuit and district court nominees confirmed by roll call vote is attributable, in part, to the decline in unanimous consent agreements during

<sup>68</sup> During the Obama presidency, 49 of 55 circuit court nominees were confirmed by roll call vote.

<sup>69</sup> Each of the 54 circuit court nominees confirmed by the Senate during the Trump presidency were confirmed by roll call vote.

<sup>70</sup> During the Clinton presidency, 32 of 305 district court nominees were confirmed by roll call vote.

<sup>71</sup> During the G.W. Bush presidency, 141 of 261 district court nominees were confirmed by roll call vote.

<sup>72</sup> During the Obama presidency, 173 of 268 district court nominees were confirmed by roll call vote. And during the Trump presidency, 141 of 261 district court nominees were confirmed by roll call vote.

# Useful Links

Congress by the Numbers

**[CongressByTheNumbers.com](http://CongressByTheNumbers.com)**

Leadership of Congress

**[CongressLeaders.com](http://CongressLeaders.com)**

Congressional Schedule

**[CongressSchedules.com](http://CongressSchedules.com)**

Congress Seating Charts

**[CongressSeating.com](http://CongressSeating.com)**

Terms and Sessions of Congress

**[TermsofCongress.com](http://TermsofCongress.com)**

Senate Classes: Terms of Service

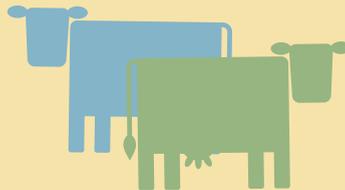
**[SenateClasses.com](http://SenateClasses.com)**

Congressional Glossary

**[CongressionalGlossary.com](http://CongressionalGlossary.com)**

You have 2 cows

**[YouHave2Cows.com](http://YouHave2Cows.com)**



some of this period that arranged for circuit and district court nominees to be confirmed by voice vote or unanimous consent.<sup>73</sup>

## Number of Nay Votes Received at Time of Confirmation

The increased frequency with which roll call votes have been used to confirm U.S. circuit and district court nominations has not always been correlated with Senators using roll call votes to express opposition to a nominee by voting against his or her nomination. As shown by **Figure 6**, there is notable variation in the number of nay votes received by circuit and district court nominations when they have been confirmed by roll call vote.

The figure shows the number of nominations that received zero nay votes at the time of confirmation. For nominations that received at least one nay vote, the roll call data are presented using five ranges to reflect the number of nay votes received by a President's nominees: (1) 1 to 10 nay votes; (2) 11 to 20 nay votes; (3) 21 to 30 nay votes; (4) 31 to 40 nay votes; and (5) more than 40 nay votes.

### U.S. Circuit Court Nominees

Of the 10 circuit court nominees confirmed by roll call vote, in total, during the Carter, Reagan, and George H. W. Bush presidencies, only 2 received fewer than 10 nay votes (with 1 receiving zero nay votes). The other 8 circuit court nominees received at least 11 nay votes at the time of confirmation (with 5 of the 8 receiving at least 31 nay votes). This likely reflects the practice, at least during this era, of roll call votes generally being limited to confirming nominations for which there was more than nominal opposition by more than a handful of Senators.<sup>74</sup>

During the Clinton presidency, 12 (75.0%) of 16 circuit court nominees confirmed by roll call vote received at least 1 nay vote (with 9 of 16, or 56.2%, receiving more than 20 nay votes). As with circuit court nominees during the three earlier presidencies included in the analysis, this may reflect the practice of generally using roll call votes to confirm nominees for whom there was more than minimal opposition in the Senate.

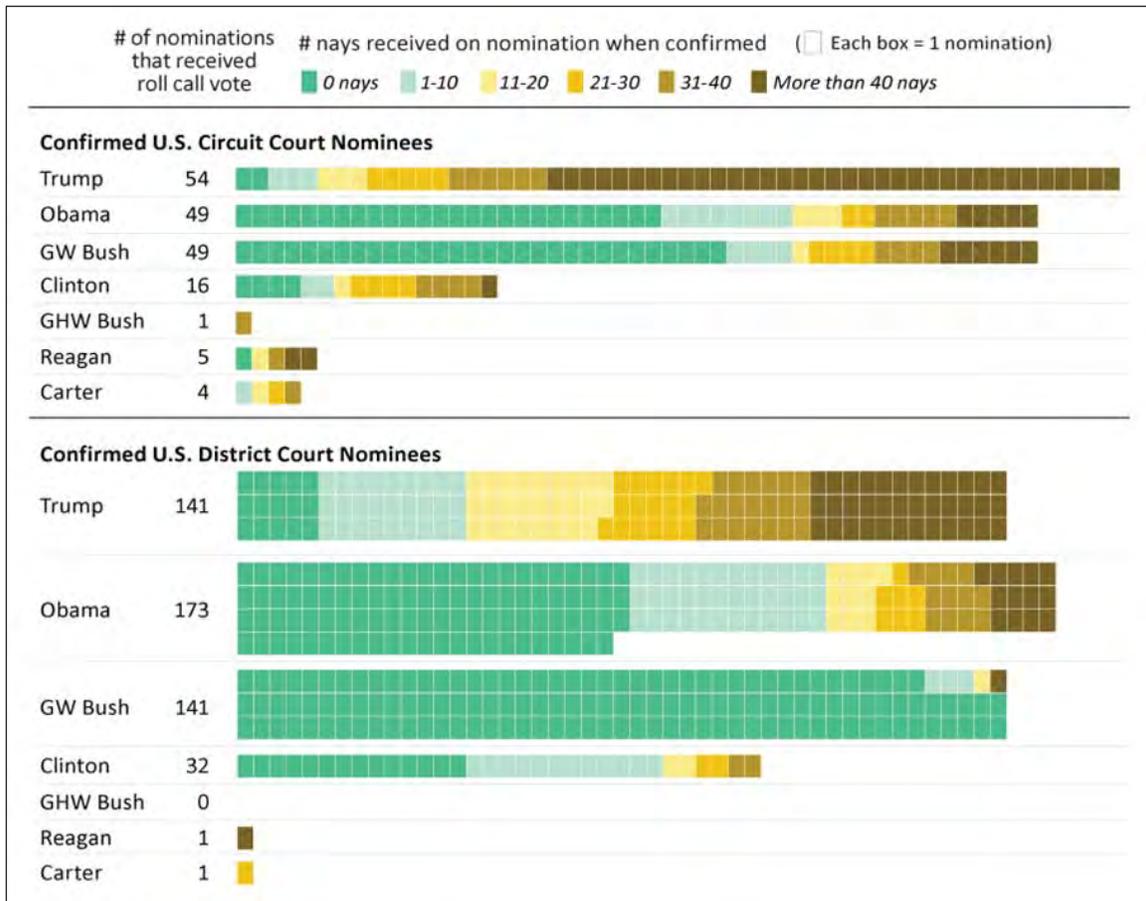
In contrast, while the number of circuit court nominees confirmed by roll call vote increased during the George W. Bush and Obama presidencies, a majority of circuit court nominees approved by roll call during both presidencies were nonetheless confirmed without receiving any nay votes. Specifically, during the Bush presidency, 30 (61.2%) of 49 circuit court nominees confirmed by roll call vote received zero nay votes. And during the Obama presidency, 26 (53.1%) of 49 circuit court nominees confirmed by roll call vote received zero nay votes.

---

<sup>73</sup> For additional information on the procedural tracks followed by the Senate in confirming lower federal court nomination, see CRS Report R43762, *The Appointment Process for U.S. Circuit and District Court Nominations: An Overview*, by Barry J. McMillion.

<sup>74</sup> Or at least the desire by more than a handful of Senators to be formally on the record in opposition to a nomination.

**Figure 6. U.S. Circuit and District Court Nominees: Number of Nay Votes Received at Time of Confirmation**  
(by presidency, from 1977 to 2020)



**Source:** Congressional Research Service.

**Notes:** This figure shows the number of U.S. circuit and district court nominations that received zero nay votes at the time of confirmation. Additionally, for nominations that received at least one nay vote, the roll call data are presented using five ranges to reflect the number of nay votes received by a President’s nominees: (1) 1 to 10 nay votes; (2) 11 to 20 nay votes; (3) 21 to 30 nay votes; (4) 31 to 40 nay votes; and (5) more than 40 nay votes. This figure does not include any nominations during this period that were rejected by roll call vote in the Senate.

During the Trump presidency, many circuit court nominees were confirmed with historically high levels of opposition by the Senate minority party.<sup>75</sup> Specifically, only 2 (3.7%) of 54 circuit court

<sup>75</sup> At least some of this opposition might be attributable to the change in the blue slip process used for U.S. circuit court nominees during the 115<sup>th</sup> and 116<sup>th</sup> Congresses (i.e., some Senators may have cast nay votes in opposition to the change in the blue slip process rather than in opposition to particular nominees). This change enabled circuit court nominations to be considered by the Senate Judiciary Committee (and, if voted favorably out of committee, considered by the full Senate) without the support of both of a circuit court nominee’s home-state Senators. See Sen. Chuck Grassley, *Congressional Record*, daily edition, vol. 163 (November 16, 2017), pp. S7285-S7287; Jordain Carney, “Grassley says he’s nixing blue slips for pair of nominees,” *The Hill*, November 16, 2017, at <https://thehill.com/homenews/senate/360791-grassley-says-hes-nixing-blue-slips-for-pair-of-nominees>; and Trish Turner, “Trump, ignoring Democratic senators, set to name 2 judges in California,” *ABC News*, March 13, 2019, at <https://abcnews.go.com/Politics/trump-make-appointments-9th-circuit-court-democratic-objections/story?id=61637165>.

nominees confirmed by roll call vote received zero nay votes. Instead, a majority of circuit court nominees (35 of 54, or 64.8%) approved during the Trump presidency were confirmed after having received more than 40 nay votes. An additional 6 nominees (or 11.1% of nominees) received 31 to 40 nay votes at the time of confirmation.

By presidency, the circuit court nominee who received the greatest number of nay votes—and the court to which he was nominated—when confirmed by the Senate was Abner J. Mikva, D.C. Circuit, 31 nay votes (Carter); Daniel A. Manion, Seventh Circuit, 46 nay votes (Reagan); Edward E. Carnes, Eleventh Circuit, 36 nay votes (George H. W. Bush); William A. Fletcher, Ninth Circuit, 41 nay votes (Clinton); William H. Pryor Jr., Eleventh Circuit, 45 nay votes (George W. Bush); David J. Barron, First Circuit, 45 nay votes (Obama); and Jonathan A. Kobes, Eighth Circuit, 50 nays (Trump).<sup>76</sup>

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

Of the two U.S. district court nominees confirmed by roll call vote, in total, during the Carter and Reagan presidencies, one received 21 to 30 nay votes and the other received 31 to 40 nay votes. As with the confirmation of circuit court nominees during this era, the use of roll call votes was in general likely limited to confirming nominations for which there was more than nominal opposition by a handful of Senators.

There was a notable shift from the George H. W. Bush presidency, during which no district court nominees were confirmed by roll call vote, to the Clinton presidency, during which 32 district court nominees were confirmed by roll call vote. Despite the increase in the number of district court nominees who were confirmed by roll call vote, 26 (81.3%) of the 32 nominees who were confirmed by roll call vote received 10 or fewer nay votes (with 14, or 43.8%, of 32 nominees receiving zero nay votes).

The number of district court nominees confirmed by roll call vote continued to increase during both the George W. Bush and Obama presidencies. But, as was the case with circuit court nominees during these two presidencies, a majority of nominees confirmed by roll call vote received zero nay votes. Specifically, during the Bush presidency, 136 of 141, or 96.5%, of district court nominees confirmed by roll call received zero nay votes. And during the Obama presidency, 95 (54.9%) of 173 district court nominees confirmed by roll call vote received zero nay votes (while another 36, or 20.8%, received only 1 to 10 nay votes).

During the Trump presidency, in contrast to the two immediately preceding presidencies, only 15 (10.6%) of 141 district court nominees confirmed by roll call vote received zero nay votes at the time of confirmation. A plurality of nominees (36, or 25.5%, of 141) received more than 40 nay votes when confirmed by the Senate, while another 20 nominees, or 14.2%, received 31 to 40 nay votes at the time of confirmation.

By presidency, the district court nominee who received the greatest number of nay votes—and the court to which he or she was nominated—when confirmed by the Senate was Lyonel T. Senter, Jr., Northern District of Mississippi, 25 nay votes (Carter); Sidney A. Fitzwater, Northern District of Texas, 43 nay votes (Reagan); there were no recorded roll call votes on district court nominees during the George H. W. Bush presidency; Gerald E. Lynch, Southern District of New York, 36 nay votes (Clinton); J. Leon Holmes, Eastern District of Arkansas, 46 nays (George W. Bush); and Victor A. Bolden, District of Connecticut, 46 nays (Obama).

---

<sup>76</sup> On December 11, 2018, former Vice President Michael Pence cast a tie-breaking vote and the Senate approved the Kobes nomination by a vote of 51-50.

For the Trump presidency, five nominees each received 47 nay votes (the most nay votes received by any of President Trump’s district court nominees): J. Campbell Barker (Eastern District of Texas); Andrew L. Brasher (Middle District of Alabama); Katherine A. Crytzer (Eastern District of Tennessee); Howard C. Nielson, Jr. (District of Utah); and Patrick R. Wyrick (District of Western Oklahoma).

## Demographic Characteristics of Confirmed Nominees

This section provides data related to the gender and race of U.S. circuit and district court nominees confirmed by the Senate during each presidency since the Carter Administration. These particular demographic characteristics of judicial nominees are of ongoing interest to Congress. Such interest is demonstrated especially at the time circuit and district court nominations are considered by the Senate.<sup>77</sup> For example, floor statements by Senators in support of circuit or district court nominees frequently emphasize the particular demographic characteristics of nominees who would enhance the diversity of the federal judiciary.<sup>78</sup>

### Gender

#### U.S. Circuit Court Nominees

**Figure 7** shows, for the seven presidencies during this period,<sup>79</sup> that the percentage of confirmed U.S. circuit court nominees who were women ranged from a low of 7.2% during the Reagan presidency to a high of 43.6% during the Obama presidency.<sup>80</sup>

---

<sup>77</sup> Although Members of the U.S. House of Representatives do not have a formal constitutional role in the confirmation of federal judges, the demographic characteristics of judicial nominees are also of interest to Members of the House. See, for example, Rep. Mike Honda, “Asian Pacific American Heritage Month,” Remarks in the House, *Congressional Record*, daily edition, May 19, 2010, p. H3652 (stating that the President has “demonstrated commitment to judicial diversity through the nomination of high caliber Asian American and other minority jurists at all levels of the Federal bench”). See also Rep. Charlie Gonzalez, “Nomination of Miguel Estrada,” Remarks in the House, *Congressional Record*, daily edition, February 13, 2003, p. H685 (stating that the Congressional Hispanic Caucus “will actively work to identify and recommend qualified Hispanic candidates to fill Federal court vacancies”). Additionally, in 2014, the Congressional Black Caucus released a letter to urge President Obama to appoint a greater number of African American judges, particularly to certain judicial districts (e.g., the three judicial districts located in Alabama). For the text of the letter, see <https://www.documentcloud.org/documents/1009668-cbc-judges-letter-to-the-president.html>.

<sup>78</sup> For recent examples, see Sen. Lisa Murkowski, “Executive Session,” Remarks in the Senate, *Congressional Record*, daily edition, November 15, 2011, p. S7426; Sen. Ben Cardin, “Executive Session,” Remarks in the Senate, *Congressional Record*, daily edition, April 4, 2011, p. S2079; Sen. Roger Wicker, “Executive Session,” Remarks in the Senate, *Congressional Record*, daily edition, November 4, 2013, p. S7791; Sen. Pat Toomey, “Executive Session,” Remarks in the Senate, *Congressional Record*, daily edition, January 11, 2016; Sen. Amy Klobuchar, “Executive Session,” Remarks in the Senate, *Congressional Record*, daily edition, January 19, 2016, p. S84; and Sen. Cory Booker, “Executive Session,” Remarks in the Senate, *Congressional Record*, daily edition, January 27, 2016, p. S242.

<sup>79</sup> Note that the Carter presidency is the first presidency during which women comprised a notable number and percentage of confirmed circuit and district court nominees. During the Carter presidency, 12 of 59 confirmed circuit court nominees and 29 of 203 confirmed district court nominees were women. Prior to the Carter presidency, there had been two women appointed as circuit court judges and six appointed as district court judges. The first female U.S. circuit court judge, Florence E. Allen, was appointed to the Sixth Circuit by President Franklin D. Roosevelt in 1934. The first female U.S. district court judge, Burnita S. Matthews, was appointed to the U.S. District Court for the District of Columbia by President Truman in 1949.

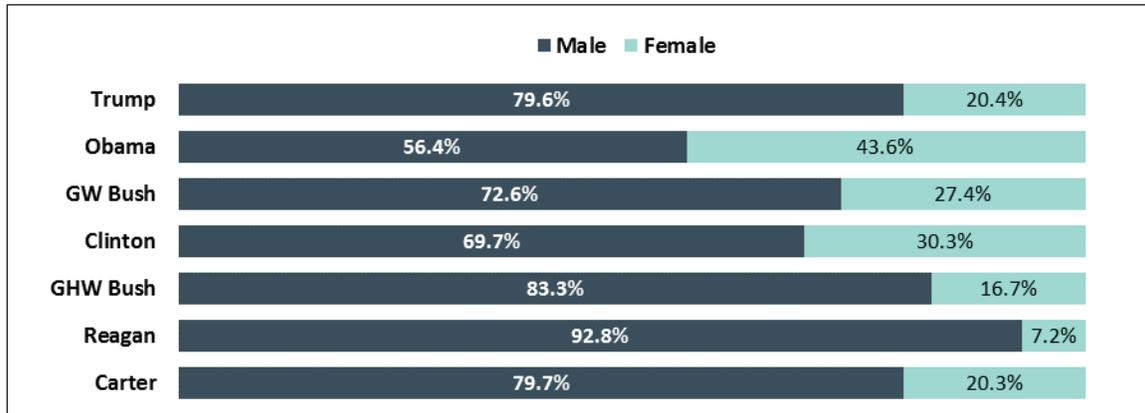
<sup>80</sup> Conversely, the percentage of confirmed U.S. circuit court nominees who were male ranged from a low of 56.4%

Most recently, during the Trump presidency, the percentage of confirmed circuit court nominees who were women was 20.4% (similar to the Carter presidency, when 20.3% of confirmed circuit court nominees were women).

The median number of women confirmed to U.S. circuit court judgeships by presidency during this period was 12 (with the fewest number, 6, confirmed during the Reagan presidency and the greatest number, 24, confirmed during the Obama presidency). Most recently, during the Trump presidency, 11 women were appointed to circuit court judgeships.<sup>81</sup>

**Figure 7. U.S. Circuit Court Nominees: Percentage of Nominees Confirmed, by Gender**

(by presidency, from 1977 to 2020)



**Source:** Congressional Research Service.

**Note:** This figure shows, for select presidencies, the percentage of confirmed U.S. circuit court nominees by gender.

### U.S. District Court Nominees

For U.S. district court nominees, as shown by **Figure 8**, the percentage of confirmed nominees who were women ranged from a low of 8.3% during the Reagan presidency to a high of 41.0% during the Obama presidency.<sup>82</sup>

Most recently, during the Trump presidency, the percentage of confirmed district court nominees who were women was 25.3% (the third-highest percentage of female appointees among the seven presidencies).

The median number of women confirmed to U.S. district court judgeships by presidency during this period was 44 (with the fewest number, 24, confirmed during the Reagan presidency and the greatest number, 110, confirmed during the Obama presidency). Most recently, during the Trump presidency, 44 women were appointed to district court judgeships.<sup>83</sup>

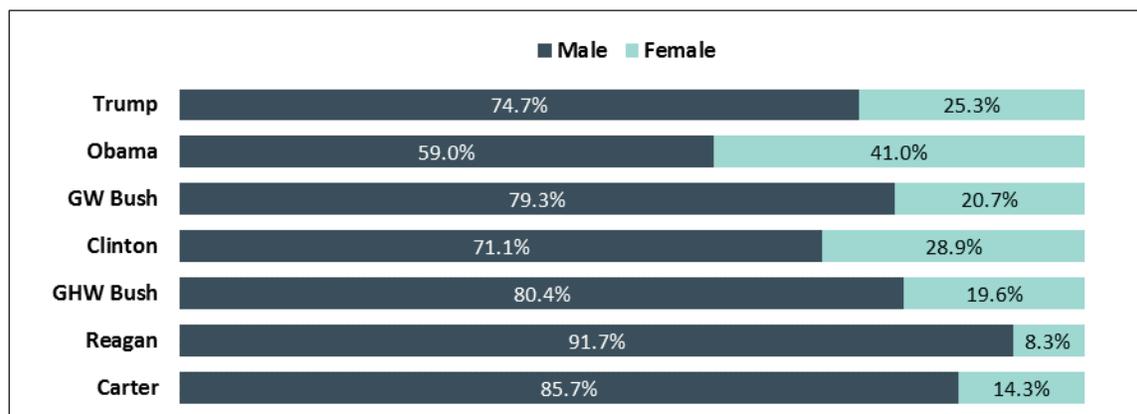
during the Obama presidency to a high of 92.8% during the Reagan presidency.

<sup>81</sup> The median number of men confirmed to U.S. circuit court judgeships by presidency during this period was 45 (with the fewest number, 31, confirmed during the Obama presidency and the greatest number, 77, confirmed during the Reagan presidency). Most recently, during the Trump presidency, 43 men were appointed to circuit court judgeships.

<sup>82</sup> Conversely, the percentage of confirmed U.S. district court nominees who were male ranged from a low of 59.0% during the Obama presidency to a high of 91.7% during the Reagan presidency.

<sup>83</sup> The median number of men confirmed to U.S. district court judgeships by presidency during this period was 174

**Figure 8. U.S. District Court Nominees: Percentage Confirmed, by Gender**  
(by presidency, from 1977 to 2020)



**Source:** Congressional Research Service.

**Note:** This figure shows, for select presidencies, the percentage of confirmed U.S. district court nominees by gender.

## Race

**Table 12** and **Table 13** show, for the seven presidencies during this period, the percentage of each President’s confirmed U.S. circuit and district court nominees who were white, African American, Hispanic, Asian American, or “other” (e.g., biracial or another race such as American Indian/Native American).<sup>84</sup>

### U.S. Circuit Court Nominees

#### *White Nominees*

For the seven presidencies during this period, as shown by **Table 12**, the percentage of confirmed U.S. circuit court nominees who were white ranged from a low of 65.5% during the Obama presidency to a high of 97.6% during the Reagan presidency.

The median number of white circuit court appointees by presidency during this period was 47 (with the fewest number, 36, appointed during the Obama presidency and the greatest number, 81, appointed during the Reagan presidency).

(with the fewest number, 119, confirmed during the George H. W. Bush presidency and the greatest number, 266, confirmed during the Reagan presidency).

<sup>84</sup> The racial data for confirmed judicial nominees are compiled from the *Biographical Directory of Article III Judges*, a resource provided by the Federal Judicial Center and Administrative Office of U.S. Courts. The racial categories used in this report “generally reflect a social definition of race recognized in this country and [are] not an attempt” by CRS “to define race biologically, anthropologically, or genetically.” See <https://www.census.gov/topics/population/race.html>. For the purposes of this report, the Hispanic category is treated as a nonwhite category. Note, though, that individuals who identify as Hispanic or Latino may be of any race. Ibid.

### *African American Nominees*

The percentage of confirmed U.S. circuit court nominees who were African American ranged from a low of 0.0% during the Trump presidency to a high of 16.4% during the Obama presidency.

The median number of African American circuit court appointees by presidency during this period was six (with the fewest number, zero, appointed during the Trump presidency and the greatest number, nine, appointed during each of the Carter, Clinton, and Obama presidencies).

The Trump presidency is the first presidency since the Ford presidency (1974-1977) that an African American individual was not appointed to a U.S. circuit court judgeship.

**Table 12. U.S. Circuit Court Nominees: Percentage Confirmed, by Race**  
(by presidency, from 1977 to 2020)

President	White	Nonwhite		
		African American	Hispanic	Asian American
Trump	85.2%	0.0%	1.9%	13.0%
Obama	65.5%	16.4%	10.9%	7.3%
G.W. Bush	85.5%	9.7%	4.8%	0.0%
Clinton	74.2%	13.6%	10.6%	1.5%
G.H.W. Bush	90.5%	4.8%	4.8%	0.0%
Reagan	97.6%	1.2%	1.2%	0.0%
Carter	79.7%	15.3%	3.4%	1.7%

**Source:** Congressional Research Service.

**Notes:** This figures shows, for select presidencies, the percentage of confirmed U.S. circuit court nominees by race. Percentages may not equal 100 due to rounding. The racial data for confirmed judicial nominees are compiled from the *Biographical Directory of Article III Judges*, a resource provided by the Federal Judicial Center and Administrative Office of U.S. Courts.

### *Hispanic Nominees*

The percentage of confirmed U.S. circuit court nominees who were Hispanic ranged from a low of 1.2% during the Reagan presidency to a high of 10.9% during the Obama presidency.

The median number of Hispanic circuit court appointees by presidency during this period was two (with the fewest number, one, appointed during each of the Reagan and Trump presidencies and the greatest number, seven, appointed during the Clinton presidency).

### *Asian American Nominees*

The percentage of confirmed U.S. circuit court nominees who were Asian American ranged from a low of 0.0% during the presidencies of Reagan, George H. W. Bush, and George W. Bush to a high of 13.0% during the Trump presidency.

The median number of Asian American circuit court appointees by presidency during this period was one (with the fewest number, zero, appointed during each of the Reagan, George H. W. Bush, and George W. Bush presidencies and the greatest number, seven, appointed during the Trump presidency).

## U.S. District Court Nominees

### White Nominees

For the seven presidencies during this period, as shown by **Table 13**, the percentage of confirmed U.S. district court nominees who were white ranged from a low of 63.4% during the Obama presidency to a high of 92.8% during the Reagan presidency.

The median number of white district court appointees by presidency during this period was 170 (with the fewest number, 132, appointed during the George H. W. Bush presidency and the greatest number, 269, appointed during the Reagan presidency).

### African American Nominees

The percentage of confirmed U.S. district court nominees who were African American ranged from a low of 2.1% during the Reagan presidency to a high of 18.7% during the Obama presidency.

The median number of African American district court appointees by presidency during this period was 18 (with the fewest number, 6, appointed during the Reagan presidency and the greatest number, 53, appointed during the Clinton presidency).

**Table 13. U.S. District Court Nominees: Percentage Confirmed, by Race**  
(by presidency, from 1977 to 2020)

President	White	Nonwhite			
		African American	Hispanic	Asian American	Other
Trump	83.3%	5.2%	4.6%	3.4%	3.4%
Obama	63.4%	18.7%	9.3%	5.2%	3.4%
G.W. Bush	81.2%	6.9%	10.3%	1.5%	0.0%
Clinton	75.1%	17.4%	5.9%	1.3%	0.3%
G.H.W. Bush	89.2%	6.8%	4.1%	0.0%	0.0%
Reagan	92.8%	2.1%	4.5%	0.7%	0.0%
Carter	77.8%	13.8%	6.9%	0.5%	0.5%

**Source:** Congressional Research Service.

**Notes:** This figures shows, for select presidencies, the percentage of confirmed U.S. district court nominees by race. Percentages may not equal 100 due to rounding. The racial data for confirmed judicial nominees are compiled from the *Biographical Directory of Article III Judges*, a resource provided by the Federal Judicial Center and Administrative Office of U.S. Courts.

### Hispanic Nominees

The percentage of confirmed U.S. district court nominees who were Hispanic ranged from a low of 4.1% during the George H. W. Bush presidency to a high of 10.3% during the George W. Bush presidency.

The median number of Hispanic district court appointees by presidency during this period was 14 (with the fewest number, 6, appointed during the George H. W. Bush presidency and the greatest number, 27, appointed during the George W. Bush presidency).

### ***Asian American Nominees***

The percentage of confirmed U.S. district court nominees who were Asian American ranged from a low of 0.0% during the George H. W. Bush presidency to a high of 5.2% during the Obama presidency.

The median number of Asian American district court appointees by presidency during this period was 4 (with the fewest number, 0, appointed during the George H. W. Bush presidency and the greatest number, 14, appointed during the Obama presidency).

### ***Other Nominees***

The percentage of confirmed U.S. district court nominees in the “other” category (e.g., biracial, etc.) ranged from a low of 0.0% during the Reagan, George H. W. Bush, and George W. Bush presidencies to a high of 3.4% during the Obama and Trump presidencies.

The median number of “other” district court appointees by presidency during this period was one (with the fewest number, zero, appointed during the Reagan, George H. W. Bush, and George W. Bush presidencies and the greatest number, nine, appointed during the Obama presidency).

## **Author Information**

Barry J. McMillion  
Analyst in American National Government

## **Acknowledgments**

Amber Wilhelm, Graphics Specialist in the CRS Office of Publishing, prepared figures included in this report. Sarah J. Eckman, Analyst in American National Government, and Raymond Williams, former Research Assistant for the Congress and Judiciary Section, assisted with data presented in this report.

---

## **Disclaimer**

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS’s institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

# Learn how Capitol Hill really works

**All of our programs and any combination of their topics can be tailored for custom training for your organization.**

For more than 40 years, TheCapitol.Net and its predecessor, Congressional Quarterly Executive Conferences, have been teaching professionals from government, military, business, and NGOs about the dynamics and operations of the legislative and executive branches and how to work with them.

Our training, on-site and online, and publications include congressional operations, legislative and budget process, communication and advocacy, media and public relations, research, testifying before Congress, legislative drafting, critical thinking and writing, and more.

- **Diverse Client Base**—We have tailored hundreds of custom on-site and online training programs for Congress, numerous agencies in all federal departments, the military, law firms, lobbying firms, unions, think tanks and NGOs, foreign delegations, associations and corporations, delivering exceptional insight into how Washington works.™
- **Experienced Program Design and Delivery**—We have designed and delivered hundreds of custom programs covering congressional/legislative operations, budget process, media training, writing skills, legislative drafting, advocacy, research, testifying before Congress, grassroots, and more.
- **Professional Materials**—We provide training materials and publications that show how Washington works. Our publications are designed both as course materials and as invaluable reference tools.
- **Large Team of Experienced Faculty**—More than 150 faculty members provide independent subject matter expertise. Each program is designed using the best faculty member for each session.
- **Non-Partisan**—TheCapitol.Net is non-partisan.
- **GSA Schedule**—TheCapitol.Net is on the GSA Schedule for custom training: GSA Contract GS02F0192X.

Please see our Capability Statement on our web site at [TCNCS.com](http://TCNCS.com).

Custom training programs are designed to meet your educational and training goals, each led by independent subject-matter experts best qualified to help you reach your educational objectives and align with your audience.

As part of your custom program, we can also provide online venue, classroom space, breaks and meals, receptions, tours, and online registration and individual attendee billing services.

For more information about custom on-site training for your organization, please see our web site: [TCNCustom.com](http://TCNCustom.com) or call us: 202-678-1600, ext 115.



*Non-partisan training and publications that show how Washington works.™*

PO Box 25706, Alexandria, VA 22313-5706  
202-678-1600 • [www.thecapitol.net](http://www.thecapitol.net)



TheCapitol.Net is on the GSA Schedule for custom training.  
GSA Contract GS02F0192X

