

Judicial Nomination Statistics and Analysis: U.S. Circuit and District Courts, 1977-2022

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Judicial Nomination Statistics and Analysis: U.S. Circuit and District Courts, 1977-2022

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 2022, includes every Administration from the Carter presidency to the first two calendar years of the Biden presidency (2021-2022). This period also includes every Congress from the 95th (1977-1978) through the 117th (2021-2022).

This report will be next updated by CRS at the conclusion of the 118th Congress.

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Introduction

Under the Appointments Clause of the Constitution,¹ 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.²

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.³ 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 appeals⁴ 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.⁵

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 2022 (the first two years of the Biden presidency).⁶

The report’s 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).

¹ 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....”

² 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.

³ 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.

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

⁵ 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 forums in which numerous Senators expressed, in detailed statements, 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, 107th Cong., 1st sess., June 26 and September 4, 2001, S.Hrg. 107-463 (Washington: GPO, 2002), p. 276; 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, 108th Cong., 1st sess., May 6, 2003, S.Hrg. 108-227 (Washington: GPO, 2003), p. 393.

⁶ This period includes the 95th Congress through the 117th 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).⁷ The First Circuit (comprising Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico) has the fewest number of authorized judgeships, 6, while the Ninth Circuit (comprising Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington) has the most, 29.⁸

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 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.⁹ 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.¹⁰

⁷ 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.

⁸ 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.

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

¹⁰ 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.

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. Factors that influence the number of such opportunities include the frequency with which judicial departures occur; whether any new judgeships are statutorily authorized by Congress (which consequently provide a President with the opportunity to nominate individuals to the new judgeships);¹¹ 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 2021.¹²

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 2021)

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

¹¹ 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).

¹² 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 eight 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 th	Bush, G.W.	8.9	5.9
2009	111 th	Obama	7.3	5.9
2011	112 th	Obama	8.9	11.7
2013	113 th	Obama	8.9	8.8
2015	114 th	Obama	3.9	4.9
2017	115 th	Trump	9.5	12.8
2019	116 th	Trump	6.7	17.6
2021	117 th	Biden	1.1	6.4

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%.¹³ The median percentage of district court judgeships that were vacant immediately prior to the start of a new Congress was 7.2%.

As shown by the table, the percentage of U.S. circuit judgeships that were vacant was highest at the beginning of the 96th Congress,¹⁴ 28.8%, and lowest at the beginning of the 117th Congress, 1.1%. The percentage of U.S. district court judgeships that were vacant was also highest at the beginning of the 96th Congress, 24.7%, and lowest at the beginning of the 109th 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 115th 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.¹⁵

¹³ 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.

¹⁴ 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 96th Congress, as shown by **Table 1**.

¹⁵ Specifically, 18 district court nominations were approved during the 114th 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 102nd 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.

In contrast, as a result of the change in the blue slip policy for circuit court nominations adopted by the Senate Judiciary Committee in 2017, circuit court vacancies that might have otherwise existed at the beginning of the Biden presidency (and the 117th Congress) were filled with new appointees during the 115th and 116th Congresses. As a result of the change, the return of positive blue slips from both of a nominee's home state Senators was no longer required in order for the committee to act on his or her nomination—including reporting the nomination to the full Senate for consideration.¹⁶ Ultimately, during the 115th and 116th Congresses, there were 17 circuit court nominees confirmed by the Senate who did not have the support of one or both of his or her home state Senators.¹⁷

Number and Percentage of Nominees Confirmed

Some of the factors that influence the number and percentage of judicial nominees confirmed during any given presidency include 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.¹⁸

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.

During the first two years of the Biden presidency (2021-2022), 28 circuit court nominees were confirmed.

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

¹⁶ See Jordain Carney, "Grassley says he's nixing blue slips for pair of nominees," *The Hill*, Nov. 16, 2017, at <https://thehill.com/homenews/senate/360791-grassley-says-hes-nixing-blue-slips-for-pair-of-nominees>.

¹⁷ The blue slip status for the circuit court nominees confirmed without the support of both home state Senators during the 115th and 116th Congresses was gathered by CRS using publicly available information. See, e.g., Patrick L. Gregory, "Trump 7th Cir. Nominee Michael Brennan Advances Without Blue Slip," *Bloomberg Law*, February 15, 2018, at <https://news.bloomberglaw.com/us-law-week/trump-7th-cir-nominee-michael-brennan-advances-without-blue-slip>; David Wildstein, "Senate panel moves Matey nomination," *New Jersey Globe*, February 7, 2019, at <https://newjerseyglobe.com/congress/senate-panel-moves-matey-nomination>; Matt Bernardini, "2nd Circ. Pick Confirmed Despite No Home-State Support," *Law360*, May 8, 2019, at <https://www.law360.com/articles/1157699/2nd-circ-pick-confirmed-despite-no-home-state-support>.

¹⁸ See, for example, Roger E. Hartley and Lisa M. Holmes, "The Increasing Senate Scrutiny of Lower Federal Court Nominees," *Political Science Quarterly*, vol. 117, no. 2 (summer, 2002); Tajuana D. Massie, Thomas G. Hansford, Donald R. Songer, "The Timing of Presidential Nominations to the Lower Federal Courts," *Political Research Quarterly*, vol. 57, no. 1 (March 2004); and Elisha Carol Savchak, Thomas G. Hansford, Donald R. Songer, Kenneth L. Manning, Robert A. Carp, "Taking It to the Next Level: The Elevation of District Court Judges to the U.S. Courts of Appeals," *American Journal of Political Science*, vol. 50, no. 2 (April 2006).



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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).

During the first two years of the Biden presidency (2021-2022), 75.7% of circuit court nominees were confirmed. As of March 15, 2023, 8 of the 9 circuit court nominees not confirmed during the 117th Congress have been renominated during the 118th Congress.

Table 2. U.S. Circuit and District Court Nominees of Eight Most Recent Presidents: Number Nominated, Number Confirmed, Percentage Confirmed
(1977 to 2022)

President (Congress, Years)		U.S. Circuit Court Nominees	U.S. District Court Nominees	U.S. Circuit and District Court Nominees (Combined)
Carter (95 th -96 th , 1977-1980)	N	60	218	278
	C	56	202	258
	%	93.3%	92.7%	92.8%
Reagan (97 th -100 th , 1981-1988)	N	94	306	400
	C	83	290	373
	%	88.3%	94.8%	93.2%
Bush, G.H.W. (101 st -102 nd , 1989-1992)	N	53	192	245
	C	42	148	190
	%	79.2%	77.1%	77.6%
Clinton (103 rd -106 th , 1993-2000)	N	90	350	440
	C	65	305	370
	%	72.2%	87.1%	84.1%
Bush, G.W. (107 th -110 th , 2001-2008)	N	85	286	371
	C	61	261	322
	%	71.8%	91.3%	86.8%
Obama (111 th -114 th , 2009-2016)	N	68	322	390
	C	55	268	323
	%	80.9%	83.2%	82.8%
Trump (115 th -116 th , 2017-2020)	N	57	208	265
	C	54	174	228
	%	94.7%	83.7%	86.0%
Biden (117 th , 2021-2022)	N	37	104	141
	C	28	68	96
	%	75.7%	65.4%	68.1%

Source: Congressional Research Service.

Notes: This table shows, for each of the past eight 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.

During the first two years of the Biden presidency (2021-2022), 68 district court nominees were confirmed.

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.

During the first two years of the Biden presidency (2021-2022), 65.4% of district court nominees were confirmed. As of February 1, 2023, 34 of the 36 district court nominees not confirmed during the 117th Congress have been renominated during the 118th Congress.

By Congress

U.S. Circuit Court Nominees

The median number of U.S. circuit court nominees confirmed during a Congress, from the 95th through the 117th, 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 114th Congress, 2015-2016) to a high of 44 (during the 96th Congress, 1979-1980). Recently, the 115th Congress (2017-2018) had the third-highest number of circuit court nominees (30) confirmed during a Congress, and the 117th Congress (2021-2022) had the fourth-highest number of circuit court nominees confirmed during a Congress (28).

The median percentage of circuit court nominees confirmed during a Congress, from the 95th through the 117th, was 66.7%. The smallest percentage of circuit court nominees, 22.2%, were confirmed during the 114th Congress (2015-2016). All (100%) of the circuit court nominations submitted to the Senate during the 95th and 99th Congresses (1977-1978 and 1985-1986, respectively) were confirmed by the Senate.

More recently, the 116th Congress (2019-2020) had the greatest percentage of circuit court nominees confirmed during a Congress (92.3%) since the 101st Congress (1989-1990).

U.S. District Court Nominees

The median number of U.S. district court nominees confirmed during a Congress, from the 95th through the 117th, was 68 (while the median number of district court nominations submitted to the Senate was approximately 94). The number of nominees confirmed ranged from a low of 18 (during the 114th Congress, 2015-2016) to a high of 154 (during the 96th Congress, 1979-1980).

More recently, the 116th Congress (2019-2020) had the second-highest number of district court nominees (121) confirmed during a Congress. Additionally, the 116th Congress had the greatest number of district court nominees (147) with nominations submitted during a Congress for the 1977-2022 period. The number of district court nominations submitted during the 117th Congress

(104) is the first time during the 1977-2022 period that more than 100 district court nominations were submitted during three consecutive Congresses (the 115th, 116th, and 117th).

The median percentage of district court nominees confirmed during a Congress, from the 95th through the 117th, was 82.3%. The smallest percentage confirmed during this period was 29.5% (during the 114th Congress, 2015-2016), and the greatest percentage confirmed was 98.6% (during the 97th Congress, 1981-1982).

Recently, the 115th Congress had the second-smallest percentage (47.3%) of district court nominees confirmed during a Congress for the 1977-2020 period. The 114th and 115th Congresses (2015-2016 and 2017-2018) 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
(95th Congress to 117th 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 th (1977-78)	12	12	100	50	48	96.0	62	60	96.8
96 th (1979-80)	48	44	91.7	168	154	91.7	216	198	91.7
97 th (1981-82)	20	19	95.0	69	68	98.6	89	87	97.8
98 th (1983-84)	19	14	73.7	75	61	81.3	94	75	79.8
99 th (1985-86)	33	33	100	100	95	95.0	133	128	96.2
100 th (1987-88)	26	17	65.4	78	66	84.6	104	83	79.8
101 st (1989-90)	23	22	95.7	50	48	96.0	73	70	95.9
102 nd (1991-92)	31	20	64.5	144	100	69.4	175	120	68.6
103 rd (1993-94)	22	19	86.4	118	107	90.7	140	126	90.0
104 th (1995-96)	20	11	55.0	85	62	72.9	105	73	69.5
105 th (1997-98)	30	20	66.7	94	79	84.0	124	99	79.8
106 th (1999-00)	34	15	44.1	83	57	68.7	117	72	61.5
107 th (2001-02)	32	17	53.1	98	83	84.7	130	100	76.9
108 th (2003-04)	34	18	52.9	94	85	90.4	128	103	80.5
109 th (2005-06)	28	16	57.1	65	35	53.8	93	51	54.8
110 th (2007-08)	23	10	43.5	79	58	73.4	102	68	66.7
111 th (2009-10)	25	16	64.0	78	44	56.4	103	60	58.3
112 th (2011-12)	25	14	56.0	127	97	76.4	152	111	73.0
113 th (2013-14)	26	23	88.5	123	109	88.6	149	132	88.6
114 th (2015-16)	9	2	22.2	61	18	29.5	70	20	28.6
115 th (2017-18)	43	30	69.8	112	53	47.3	155	83	53.5

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	
		#	%		#	%		#	%
116 th (2019-20)	26	24	92.3	147	121	82.3	173	145	83.8
117 th (2021-22)	37	28	75.7	104	68	65.4	141	96	68.1

Source: Congressional Research Service.

Notes: This table shows, for the 95th Congress through the 117th 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.¹⁹

U.S. Circuit Court Nominees

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),²⁰ the median number of circuit court nominees confirmed was 19, and the median percentage of nominees confirmed was 81.1%. 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),²¹ the median number of circuit court nominees confirmed was 16, and the median percentage of nominees confirmed was 59.8%.

The influence of unified versus divided party control on the number and percentage of circuit court nominees confirmed by the Senate has been especially notable for relatively recent Congresses. For the nine Congresses since the 103rd Congress (1993-1994) in which there was unified party control, the median number of circuit court nominees confirmed was 19, and the median percentage confirmed was 69.8%.²² In contrast, for the five Congresses in which there was divided party control, the median number of circuit court nominees confirmed was 11, and the median percentage of nominees confirmed was 44.1%.²³

¹⁹ This part of the analysis omits the 107th Congress (during which the majority party in the Senate changed prior to the end of the Congress).

²⁰ These Congresses include the 95th, 96th, 97th, 98th, 99th, 103rd, 108th, 109th, 111th, 112th, 113th, 115th, 116th, and 117th.

²¹ These Congresses include the 100th, 101st, 102nd, 104th, 105th, 106th, 110th, and 114th.

²² These Congresses include the 103rd, 108th, 109th, 111th, 112th, 113th, 115th, 116th, and 117th.

²³ These Congresses include the 104th, 105th, 106th, 110th, and 114th.

U.S. District Court Nominees

During Congresses in which there was unified party control, the median number of district court nominees confirmed was approximately 77, and the median percentage of nominees confirmed was 85.5%. 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%.²⁴

The influence of unified versus divided party control on the number, but not the percentage, of district court nominees confirmed by the Senate has also been especially notable for relatively recent Congresses.²⁵ For the nine Congresses since the 103rd Congress (1993-1994) in which there was unified party control, the median number of district court nominees confirmed was 85, and the median percentage confirmed was 76.4%. In contrast, for the five Congresses in which there was divided party control, the median number of district court nominees confirmed was 58, and the median percentage of nominees confirmed was 72.9%.

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).²⁶ 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.

The first two years of the Biden presidency are not included in **Tables 4** and **5** because it is unknown how many of President Biden's nominations will be confirmed by the Senate (and how many nominations will require two or more nominations prior to confirmation). The corresponding statistics, however, for nominees confirmed during the first two years of the Biden presidency (2021-2022) are presented in the text.

²⁴ 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 102, 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 circuit court nominations submitted during Congresses with unified or divided control (26 and 24.5, respectively).

²⁵ As discussed in the footnote immediately above, there was a notable difference in the median number of district court nominations submitted to the Senate during Congresses since 1977 in which there was unified or divided party control. This is also true for relatively more recent Congresses. During Congresses since the 103rd Congress (1993-1994) with unified party control the median number of nominations submitted by a President was 112, while during Congresses with divided control the median number of nominations submitted was 83. Consequently, while there are generally more district court nominations confirmed by the Senate during periods of unified party control, the percentage of such nominees confirmed during periods of unified control doesn't increase as might be expected (relative to periods of divided party control) given that more nominations are also submitted during periods of unified control.

²⁶ 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.

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).

Of the 28 circuit court nominees confirmed by the Senate during the first two years of the Biden presidency (2021-2022), 3 (11%) were nominated more than once prior to being confirmed.

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).

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).

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. Of the 28 circuit court nominees confirmed by the Senate during the first two years of the Biden presidency (2021-2022), 3 (11%) were nominated more than once prior to being confirmed.

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).

Of the 68 district court nominees confirmed by the Senate during the first two years of the Biden presidency (2021-2022), 14 (21%) were nominated more than once prior to being confirmed.

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. Of the 68 district court nominees confirmed by the Senate during the first two years of the Biden presidency (2021-2022), 14 (21%) were nominated more than once prior to being confirmed.

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 95th through the 117th.²⁷ 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.²⁸ 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.

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 15. For the fifteen most recent Congresses (corresponding to Congresses during the Clinton, George W. Bush, Obama, Trump, and Biden 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.

U.S. Circuit Court Nominees

No circuit court nominees had nominations returned at the end of the 95th Congress (during the Carter presidency) or during the 99th Congress (during the Reagan presidency). There was one circuit court nomination returned at the end of the 116th Congress—this was the fewest number of circuit court nominations returned at the end of a Congress since the 101st Congress (1989-1990). Most recently, there were nine circuit court nominations returned to President Biden at the end of the 117th Congress.

The 106th 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 107th and 108th Congresses, both during the George W. Bush presidency, when 15 circuit court nominations were returned at the end of each Congress.

Other than the 95th and 99th 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 116th Congress during the Trump presidency (when 3.8% of nominations were returned).

²⁷ 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.

²⁸ For example, each of the 13 district court nominations returned at the end of the 98th 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 112th Congress (2011-2012) were later approved during a subsequent Congress.

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 114th 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
(95th Congress to 117th 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 th (1977-78)	0	0	0	0	0.0%	1	0	0	1	2.0%
96 th (1979-80)	0	3	1	4	8.3%	0	6	6	12	7.1%
97 th (1981-82)	0	0	1	1	5.0%	0	0	1	1	1.4%
98 th (1983-84)	1	1	1	3	15.8%	5	3	5	13	17.3%
99 th (1985-86)	0	0	0	0	0.0%	0	1	2	3	3.0%
100 th (1987-88)	2	0	5	7	26.9%	1	5	3	9	11.5%
101 st (1989-90)	0	0	1	1	4.3%	0	0	2	2	4.0%
102 nd (1991-92)	0	1	9	10	32.3%	0	0	42	42	29.2%
103 rd (1993-94)	0	1	2	3	13.6%	0	2	9	11	9.3%
104 th (1995-96)	4	1	3	8	40.0%	3	5	12	20	23.5%
105 th (1997-98)	2	1	6	9	30.0%	2	3	6	11	11.7%
106 th (1999-00)	0	2	15	17	50.0%	0	2	22	24	28.9%
107 th (2001-02)	0	3	12	15	46.9%	0	0	15	15	15.3%
108 th (2003-04)	11	3	1	15	44.1%	0	2	6	8	8.5%
109 th (2005-06)	0	1	9	10	35.7%	13	1	14	28	43.1%
110 th (2007-08)	0	0	10	10	43.5%	0	3	17	20	25.3%
111 th (2009-10)	4	0	5	9	36.0%	16	1	17	34	43.6%
112 th (2011-12)	4	0	3	7	28.0%	6	4	14	24	18.9%
113 th (2013-14)	0	0	2	2	7.7%	0	1	10	11	8.9%
114 th (2015-16)	2	1	4	7	77.8%	18	10	15	43	70.5%
115 th (2017-18)	0	6	6	12	27.9%	31	17	8	56	50.0%
116 th (2019-20)	0	1	0	1	3.8%	3	0	18	21	14.3%
117 th (2021-22)	5	3	1	9	24.3%	19	12	5	36	34.6%

Source: Congressional Research Service.

Note: This table shows, for the 95th Congress through the 117th 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 95th and 97th Congresses during the Carter and Reagan presidencies, respectively.

The 115th Congress had the greatest number of district court nominees whose nominations were returned at the end of a Congress (56). Most recently, there were 36 district court nominations returned at the end of the 117th Congress. This ranks, among the 23 Congresses included in **Table 6**, as the fourth highest number of district court nominations returned at the end of a Congress since the 95th Congress (1977-1978).

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 97th 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 114th Congress, 2015-2016, during the Obama presidency (43 of 61 nominations, or 70.5%, were returned). The percentage of district court nominees returned at the end of the 117th Congress (34.6%) ranks, among the 23 Congresses included in **Table 6**, as the fifth highest percentage of district court nominees returned at the end of a Congress since the 95th Congress (1977-1978).

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 2022, the median number of days from nomination to confirmation by presidency and by Congress.²⁹ In general, 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 1977.³⁰

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.³¹

²⁹ 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.

³⁰ 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.

³¹ 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.

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.

The median number of days from nomination to confirmation for the 28 circuit court nominees confirmed during the first two years of the Biden presidency (2021-2022) was 120.5 days.

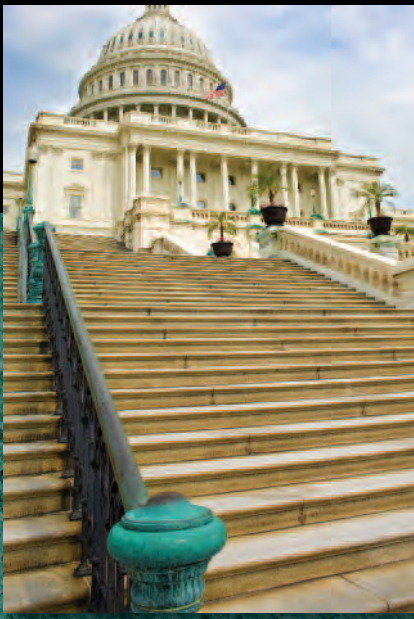
Following the Reagan presidency, the median number of days from nomination to confirmation increased during each successive presidency with the recent exception of the Trump presidency—increasing by 176% from 83 days during the George H. W. Bush presidency to 229 days during the Obama presidency, and 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 116th Congress.³²

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,³³ the average number of days from 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.³⁴

³² 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 113th 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>.

³³ 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 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.

³⁴ 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. The average number of days from nomination to confirmation for the 28 circuit court nominees confirmed during the first two years of the Biden presidency (2021-2022) was 131.3 days.



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Table 7. U.S. Circuit and District Court Nominees: Median Number of Days from Nomination to Confirmation, by Presidency
(1977 to 2022)

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
Biden	28	120.5	68	138.5

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 2022. The statistics presented in **Table 7** for the Biden presidency reflect the length of time from nomination to confirmation for nominees confirmed during the first two years of his presidency.

Figure 1 shows, for each U.S. circuit court nominee who was confirmed from 1977 through 2022, 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.³⁵

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. Additionally, during the first two years of the Biden presidency (2021-2022), no circuit court nominee confirmed by the Senate waited 365 days or more from nomination to confirmation (and no circuit court nominee waited more than 300 days from nomination to confirmation—which was the first time no nominee waited more than 300 days to be confirmed since the George H.W. Bush presidency).

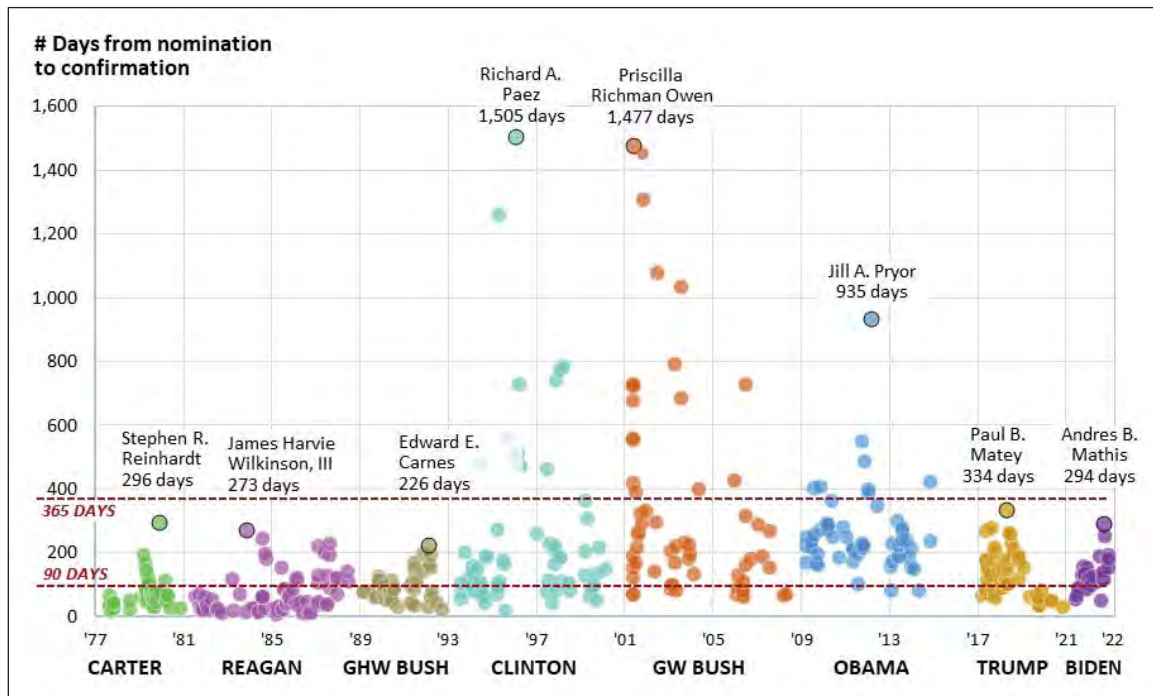
During the Clinton presidency, there were 12 circuit court nominees who waited one year or more to be confirmed. The number of circuit court nominees who waited at least 365 days to be confirmed increased further, to a high of 18, during the George W. Bush presidency. During the

³⁵ 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 2022)



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 2022. For each presidency, the circuit court nominee who waited the longest from nomination to confirmation is labeled in the figure. The information presented in **Figure 1** for the Biden presidency reflects the length of time from nomination to confirmation for nominees confirmed during the first two years of his presidency (2021-2022).

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) and President Trump had 20 circuit court nominations confirmed within 90 days of being nominated.

During the first two years of the Biden presidency (2021-2022), 6 circuit court nominees were 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 seven completed presidencies). During the Trump presidency, 37% of confirmed circuit court nominees were confirmed within 90 days of being nominated.

During the first two years of the Biden presidency (2021-2022), 21% of confirmed circuit court nominees who were confirmed 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.³⁶

The median number of days from nomination to confirmation for the 68 district court nominees confirmed during the first two years of the Biden presidency (2021-2022) was 138.5 days.

Figure 2 shows, for each U.S. district court nominee who was confirmed from 1977 through 2022, 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.³⁷

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.³⁸ 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

³⁶ 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). During the first two years of the Biden presidency (2021-2022), the average wait time from nomination to confirmation for district court nominees was 132.4 days.

³⁷ 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.

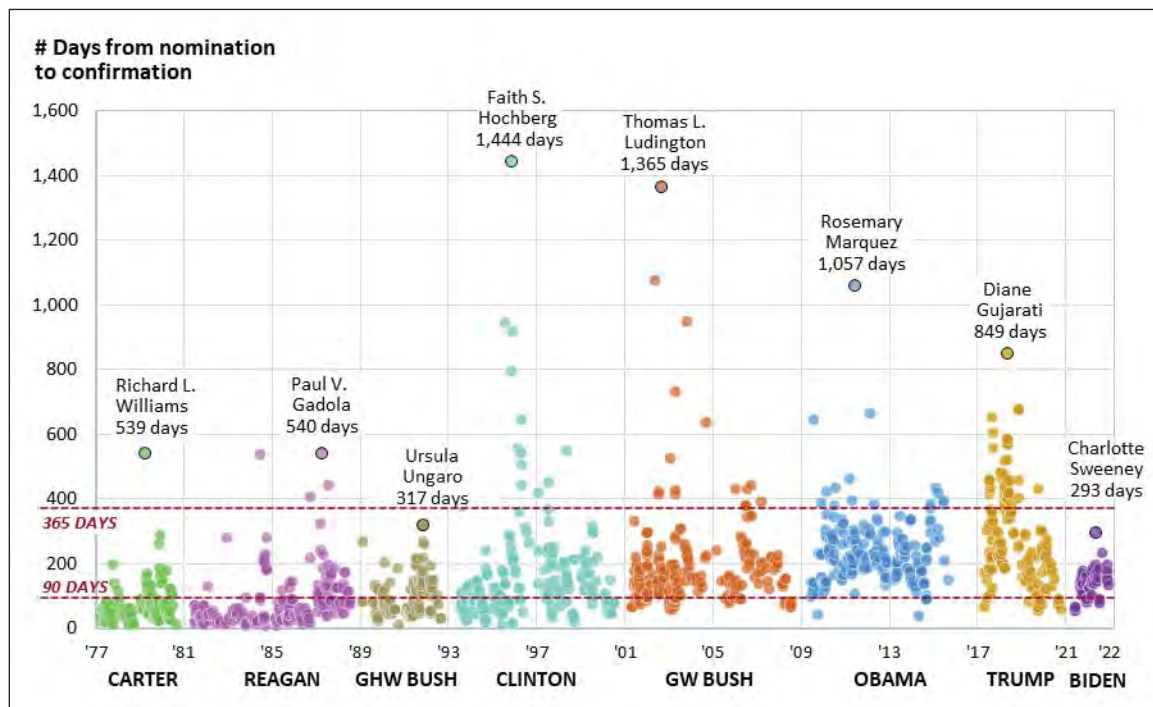
³⁸ One district court nominee during the Carter presidency waited 365 or more days from nomination to confirmation, while four nominees during the Reagan presidency waited this long.

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). 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).

During the first two years of the Biden presidency (2021-2022), no district court nominee who was confirmed waited more than 365 days from nomination to confirmation. Additionally, there were no district court nominees who waited 300 or more days to be confirmed (which is the first instance, since at least 1977, of no district court nominees waiting 300 or more days to be confirmed).

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 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 2022)



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 2022. For each presidency, the circuit court nominee who waited the longest from nomination to confirmation is labeled in the figure. The information presented in **Figure 1** for the Biden presidency reflects the length of time from nomination to confirmation for nominees confirmed during the first two years of his presidency (2021-2022).

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. President Trump had 15 district court nominees confirmed within 90 or fewer days of being nominated.

During the first two years of the Biden presidency (2021-2022), 16 district court nominees were 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.

During the first two years of the Biden presidency (2021-2022), 23.5% of district court nominees who were confirmed were confirmed within 90 or fewer days of being nominated.

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 95th Congress through the 117th Congress.

Table 8. U.S. Circuit and District Court Nominees: Median Number of Days from Nomination to Confirmation, by Congress
(95th Congress to 117th 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 th	1977-78	12	29.0	48	37.5
96 th	1979-80	44	66.5	154	65.0
97 th	1981-82	19	28.0	68	30.0
98 th	1983-84	14	46.0	61	26.0
99 th	1985-86	33	45.0	95	41.0
100 th	1987-88	17	118.0	66	98.0
101 st	1989-90	22	79.0	48	72.5
102 nd	1991-92	20	102.5	100	118.0
103 rd	1993-94	19	99.0	107	78.0

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
104 th	1995-96	11	167.0	62	99.0
105 th	1997-98	20	196.5	79	139.0
106 th	1999-2000	15	204.0	57	119.0
107 th	2001-02	17	256.0	83	126.0
108 th	2003-04	18	201.0	85	152.0
109 th	2005-06	16	281.5	35	132.0
110 th	2007-08	10	228.5	58	199.0
111 th	2009-10	16	252.5	44	140.0
112 th	2011-12	14	219.0	97	225.0
113 th	2013-14	23	229.0	109	203.0
114 th	2015-16	2	331.0	18	299.5
115 th	2017-18	30	140.5	53	235.0
116 th	2019-20	24	100.5	121	238.0
117 th	2021-22	28	120.5	68	138.5

Source: Congressional Research Service.

Note: This table shows, for the 95th Congress through the 117th 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 97th Congress (1981-1982) to a high of 331.0 days during the 114th Congress (2015-2016). The second-shortest median number of days from nomination to confirmation was 29.0 days during the 95th Congress (1977-1978), while the second-highest median number of days was 281.5 days during the 109th Congress (2005-2006).

The median number of days from nomination to confirmation for U.S. circuit court nominees stayed above 200 days from the 106th through the 114th Congress. In contrast, for the 115th 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 105th 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 116th Congress (i.e., 100.5 days) represented the fewest number of days from nomination to confirmation for circuit court nominees since the 103rd Congress (1993-1994). The median number of days from nomination to confirmation for circuit court nominees also remained below 200 days during the 117th Congress. This is the first instance since the 103rd, 104th, and 105th Congresses (1993-1998) that the median time from nomination to confirmation for circuit court nominees has been below 200 days for three consecutive Congresses.

The relatively shorter median duration from nomination to confirmation for circuit court nominees approved during the past several Congresses with unified party control was facilitated, at least in part, by the earlier reinterpretation of Senate Rule XXII during the 113th Congress

(2013-2014) 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 115th Congress (2017-2018) and continued in subsequent Congresses. These changes generally enabled, during periods of unified party control, a majority party in the Senate to prioritize and more quickly process a President's circuit court nominations.

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 95th Congress to a high of 562.9 days during the 109th Congress.³⁹ Additionally, the average time from nomination to confirmation for U.S. circuit court nominees increased by more than 30 days, relative to the median, for the 106th Congress (to 373.9 days); 105th Congress (303.1 days); 108th Congress (287.2 days); 113th Congress (281.2 days); and 110th Congress (268.8 days).⁴⁰

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 98th Congress (1983-1984) to a high of 299.5 days during the 114th Congress (2015-2016). The second-shortest median was 30 days during the 97th Congress (1981-1982), while the second-longest median was 238 days during the 116th Congress (2019-2020).⁴¹

The median number of days from nomination to confirmation for district court nominees confirmed during the 117th Congress was 138.5 days. This was the first Congress since the 111th Congress (2009-2010) that the median number of days from nomination to confirmation for district court nominees was below 200 days. The number of district court nominees confirmed during the 117th Congress also represents the greatest number of such nominees confirmed, when the median length of time from nomination to confirmation was below 200 days, since the 108th Congress (2003-2004).

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 97th Congress to a high of 302.1 days during the 114th Congress. The second-lowest average wait time for district court nominees occurred during the 98th Congress (37.1 days), and the second-longest average wait time occurred during the 116th Congress (284.5 days).⁴²

³⁹ The average length of time from nomination confirmation for circuit court nominees during the 117th Congress was 131.3 days.

⁴⁰ 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.

⁴¹ The median number of days from nomination to confirmation during the 116th 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 112th Congress (2011-2012).

⁴² The average number of days from nomination to confirmation for district court nominees confirmed during the 117th Congress was 132.4 days.

By Presidency and Congress

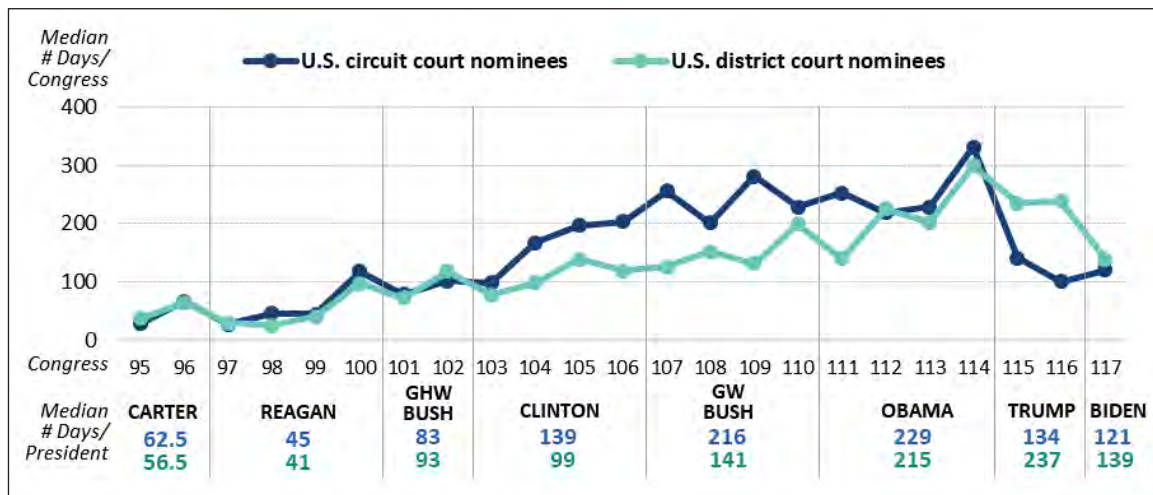
Figure 3 displays, by presidency and Congress, the median number of days from nomination to confirmation for U.S. circuit and district court nominees who were confirmed during the 1977 to 2022 period (i.e., from the 95th through the 117th Congress).

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 114th Congress (an increase of 102.0 days from the 113th Congress); the 109th Congress (an increase of 80.5 days from the 108th Congress); 100th Congress (an increase of 73.0 days from the 99th Congress); 104th Congress (an increase of 68.0 days from the 103rd Congress); and the 107th Congress (an increase of 52.0 days from the 106th Congress).

More recently, from the 114th to 115th Congress, the median number of days from nomination to confirmation for U.S. circuit court nominees declined from 331.0 to 140.5 days⁴³ and declined further from the 115th to 116th Congress, from 140.5 to 100.5 days. The median number of days from nomination to confirmation for circuit court nominees increased by 20 days from 100.5 days during the 116th Congress to 120.5 days during the 117th Congress (but, as discussed above, remained below the median of 200 days characteristic of more recent Congresses).

Figure 3. U.S. Circuit and District Court Nominees: Median Number of Days from Nomination to Confirmation, by Presidency and Congress
(1977 to 2022)



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 95th Congress (Carter presidency) through the 117th Congress (the first two years of the Biden presidency).

⁴³ 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.

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 114th Congress (an increase of 96.5 days from the 113th Congress); 112th Congress (an increase of 85.0 days from the 111th Congress); 110th Congress (an increase of 67.0 days from the 109th Congress); 100th Congress (an increase of 57.0 days from the 99th Congress); and the 102nd Congress (an increase of 45.5 days from the 101st Congress).

More recently, from the 114th to 115th Congress, the median number of days from nomination to confirmation for U.S. district court nominees declined from 299.5 to 235.0 days⁴⁴ and increased slightly, from 235.0 to 238.0 days, during the 116th Congress.

During the 117th Congress, the median time from nomination to confirmation for district court nominees was 138.5 days—a decline of nearly 100 days (or 3.3 months) from the median number of days of 238.0 days during the 116th Congress. This decline in the median number of days from nomination to confirmation from the 116th Congress to 117th Congress represents, since the 95th Congress (1977-1978), the greatest decrease in the median number of days from nomination to confirmation for district court nominees from any Congress to the immediate subsequent one.

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.⁴⁵

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.⁴⁶ 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.⁴⁷ For individuals nominated during more recent presidencies (with the exception of the Trump presidency), the length of time from

⁴⁴ 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.

⁴⁵ 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.

⁴⁶ 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.

⁴⁷ 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.

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).⁴⁸

By completed 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 days (during the George W. Bush presidency).⁴⁹ For the most recent completed presidency included in **Table 9** (the Trump presidency), the median number of days from nomination to committee hearing for U.S. circuit court nominees was 55.0 days.

The median number of days from nomination to committee hearing for circuit court nominees who received a committee hearing during the first two years of the Biden presidency (2021-2022) was 33.0 days.

Table 9. U.S. Circuit and District Court Nominees: Median Number of Days from Nomination to Committee Hearing
(1977-2022)

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

⁴⁸ 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.

⁴⁹ 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 completed presidencies included in the table, 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 completed presidency (the Trump presidency), the average number of days from nomination to committee hearing for U.S. circuit court nominees was 66.6 days.

The average number of days from nomination to committee hearing for circuit court nominees who received a hearing during the first two years of the Biden presidency (2021-2022) was 38.0 days.

President	Circuit Court Nominees	District Court Nominees
	Median Number of Days from Nomination to Hearing	Median Number of Days from Nomination to Hearing
Biden	33.0	48.0

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 2022. The statistics presented in **Table 9** for the Biden presidency reflect the length of time from nomination to committee hearing for circuit and district court nominees who received a hearing during the first two years of his presidency.

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).⁵⁰

For completed presidencies, 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).⁵¹

The median number of days from nomination to committee hearing for district court nominees who received a committee hearing during the first two years of the Biden presidency (2021-2022) was 48.0 days.

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.⁵² If the

⁵⁰ 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.

⁵¹ For the seven completed presidencies included in the table, 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 most recent completed presidency (the Trump presidency), the average length from nomination to committee hearing for district court nominees was 73.7 days.

The average number of days from nomination to committee hearing for district court nominees who received a hearing during the first two years of the Biden presidency (2021-2022) was 56.3 days.

⁵² 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. Prior to the 117th Congress, the Senate did not, in 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”). In the 117th Congress, however, Senate membership was evenly divided between the two political parties, with 50 Republicans, 48 Democrats, and 2 Independents who caucused with the Democrats. Consequently, the Senate created a temporary process to allow a Senate majority to discharge a committee from consideration of certain nominations. For additional details about the discharge process in place during the 117th

nomination is not put to the committee for a vote, or if the committee votes against reporting it (i.e., rejects the nomination),⁵³ 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.⁵⁴ 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.⁵⁵

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.⁵⁶

U.S. Circuit Court Nominees

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.⁵⁷

Specifically, for the seven completed 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

Congress, see CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki (specifically the section titled “Discharging a Committee from Consideration of a Nomination”). During the 117th Congress, four judicial nominations were placed on the *Executive Calendar* as a result of a majority of the Senate agreeing to a motion to discharge the nominations from the Judiciary Committee. For the purpose of calculating the statistics presented in this section for the first two years of the Biden presidency (2021-2022), the date the Senate voted to discharge the nomination from committee is considered the “committee report” date (rather than the date the Judiciary Committee failed to report the nomination).

⁵³ 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.

⁵⁴ 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.

⁵⁵ 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.

⁵⁶ Note, though, that not all nominees who are reported by the Senate Judiciary Committee are ultimately confirmed by the Senate.

⁵⁷ 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.

presidency).⁵⁸ For the most recent completed presidency included in the table (the Trump presidency), the median number of days from committee report to confirmation for U.S. circuit court nominees was 25.0 days.

The median number of days from committee report to confirmation for circuit court nominees who were confirmed during the first two years of the Biden presidency (2021-2022) was 57.5 days.

Table 10. U.S. Circuit and District Court Nominees: Median Number of Days from Committee Report to Confirmation
(1977-2022)

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
Biden	57.5	50.5

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 2022. The statistics presented in **Table 10** for the Biden presidency reflect the length of time from committee report to confirmation for circuit and district court nominees who were confirmed during the first two years of his presidency (2021-2022).

U.S. District Court Nominees

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.⁵⁹ Specifically, for the seven completed presidencies included in **Table 10**, the median number of days from committee report to confirmation for U.S. district court

⁵⁸ 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 completed presidencies included in the table, 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 completed presidency (the Trump presidency), the average number of days from committee report to confirmation for U.S. circuit court nominees was 29.5 days.

The average number of days from committee report to confirmation for circuit court nominees confirmed during the first two years of the Biden presidency (2021-2022) was 63.8 days.

⁵⁹ 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.

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).⁶⁰

The median number of days from committee report to confirmation for circuit court nominees who were confirmed during the first two years of the Biden presidency (2021-2022) was 50.5 days.

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).⁶¹

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.⁶² It seeks to do so by providing what it describes as an "impartial peer-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."⁶³ 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."⁶⁴

⁶⁰ 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 completed presidencies included in the table, 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).

The average number of days from committee report to confirmation for district court nominees confirmed during the first two years of the Biden presidency (2021-2022) was 52.5 days.

⁶¹ In 2009, the Obama Administration reinstituted 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. 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>.

⁶² 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*).

⁶³ *ABA Standing Committee; What It Is*, p. 1.

⁶⁴ *ABA Standing Committee; What It Is*, p. 1.

Following the multistep evaluation process by the committee,⁶⁵ a nominee is given an official rating of “well qualified,” “qualified,” or “not qualified.”⁶⁶

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.⁶⁷

U.S. Circuit Court Nominees

As shown by **Table 11**, for each of the seven completed presidencies and for the first two years of the Biden presidency (2021-2022), 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.

For circuit court nominees confirmed during the first two years of the Biden presidency (2021-2022), 78.6% were rated as well qualified and 21.4% as qualified.

Six of the seven completed presidencies listed in the table had no U.S. circuit court nominees rated as not qualified by the ABA. In contrast, the Trump presidency had three circuit court nominees rated as not qualified.⁶⁸

Table 11. U.S. Circuit and District Court Nominees: Official Ratings by the American Bar Association for Nominees Confirmed by the Senate
(1977-2022)

President	Circuit Court Nominees			District Court Nominees		
	Well Qualified	Qualified	Not Qualified	Well Qualified	Qualified	Not Qualified
Carter ^a	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

⁶⁵ 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.

⁶⁶ 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.

⁶⁷ 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.

⁶⁸ These nominees were Leonard S. Gras (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; Patrick L. Gregory, “ABA Rates Another Trump 8th 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>.

President	Circuit Court Nominees			District Court Nominees		
	Well Qualified	Qualified	Not Qualified	Well Qualified	Qualified	Not Qualified
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%
Biden	78.6%	21.4%	n/a	85.3%	14.7%	n/a

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 and it’s this rating that is used for the statistics reported in **Table 11**.

The statistics presented in **Table 11** for the Biden presidency reflect the ABA ratings for circuit and district court nominees who were confirmed during the first two years of his presidency (2021-2022).

- 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 completed presidencies and the first two years of the Biden presidency (2021-2022) were rated as well qualified by the ABA. For the seven completed presidencies included in the table, 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.

For district court nominees confirmed during the first two years of the Biden presidency, 85.3% were rated as well qualified and 14.7% as qualified.

Four of the seven completed 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.⁶⁹

No district court nominees were rated as not qualified by the ABA during the Reagan, George H.W. Bush, and Obama presidencies.

⁶⁹ 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.

COMMUNICATION SERIES



Keith Evans

Common Sense Rules of Advocacy for Lawyers

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 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.⁷⁰

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

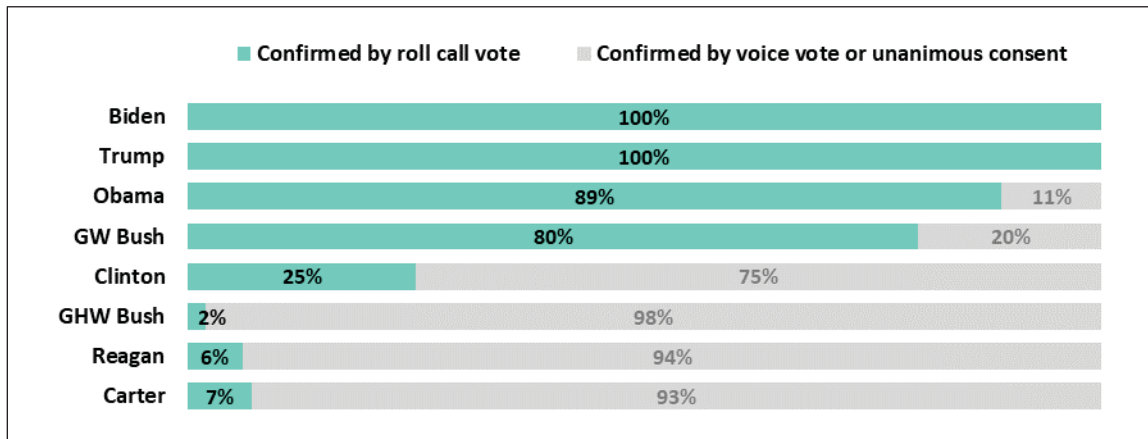
The statistics presented for the Biden presidency include those nominees confirmed during the first two years of his presidency (2021-2022).

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.⁷¹

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.⁷²

Figure 4. U.S. Circuit Court Nominees: Percentage Confirmed by Roll Call Vote
(From the Carter presidency through the first two years of the Biden presidency)



Source: Congressional Research Service.

⁷⁰ 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.

⁷¹ 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.

⁷² During the Clinton presidency, 16 of 65 U.S. circuit court nominees were confirmed by roll call vote.

Note: This figure shows the percentage of U.S. circuit court nominees confirmed by roll call vote, voice vote, or unanimous consent from the Carter presidency through the first two years of the Biden presidency (2021-2022).

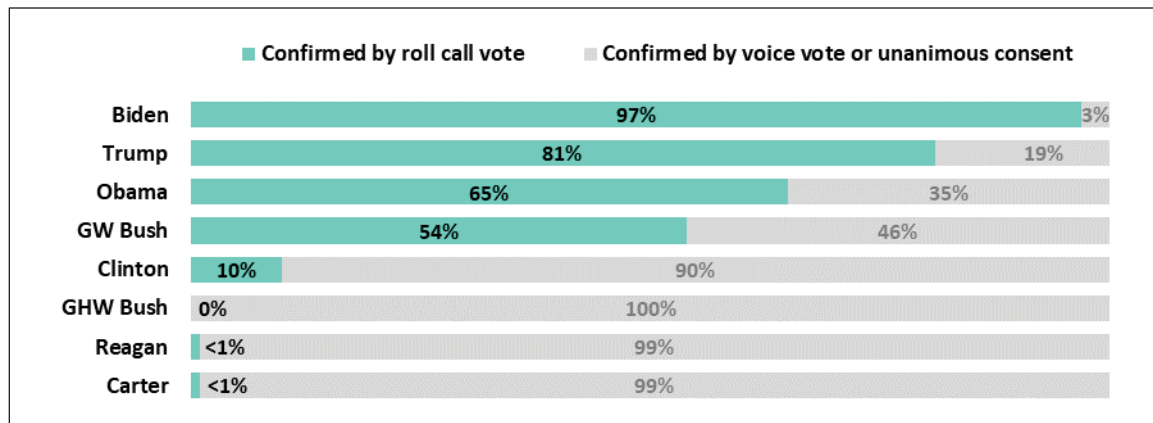
It was not, however, until the George W. Bush presidency that a majority of circuit court nominees were approved using roll call votes, with 80.3% of circuit court nominees being confirmed in this manner.⁷³ The percentage of circuit court nominees confirmed by roll call vote increased further during both the Obama presidency, with 89.1% of circuit court nominees being confirmed by roll call vote.⁷⁴

During the Trump presidency, all circuit court nominees were confirmed by roll call vote, as were all circuit court nominees confirmed during the first two years of the Biden presidency (2021-2022).⁷⁵

U.S. District Court Nominees

In contrast to 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
(From the Carter presidency through the first two years of the Biden presidency)



Source: Congressional Research Service.

Note: This figure shows the percentage of U.S. district court nominees confirmed by roll call vote, voice vote, or unanimous consent from the Carter presidency through the first two years of the Biden presidency (2021-2022).

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.⁷⁶

⁷³ During the G.W. Bush presidency, 49 of 61 circuit court nominees were confirmed by roll call vote.

⁷⁴ During the Obama presidency, 49 of 55 circuit court nominees were confirmed by roll call vote.

⁷⁵ Each of the 54 circuit court nominees confirmed by the Senate during the Trump presidency were confirmed by roll call vote, as were each of the 28 circuit court nominees confirmed during the first two years of the Biden presidency.

⁷⁶ During the Clinton presidency, 32 of 305 district court nominees were confirmed by roll call vote.

As was the case with circuit court nominees, the George W. Bush presidency was also the first of the seven completed presidencies included in **Table 5** for 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.⁷⁷ 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.⁷⁸ During the first two years of the Biden presidency (2021-2022), 97.1% of district court nominees were confirmed by roll call vote.⁷⁹

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 some of this period that arranged for circuit and district court nominees to be confirmed by voice vote or unanimous consent.⁸⁰

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.

The statistics presented for the Biden presidency include those nominees confirmed during the first two years of his presidency (2021-2022).

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.⁸¹

⁷⁷ During the G.W. Bush presidency, 141 of 261 district court nominees were confirmed by roll call vote.

⁷⁸ 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.

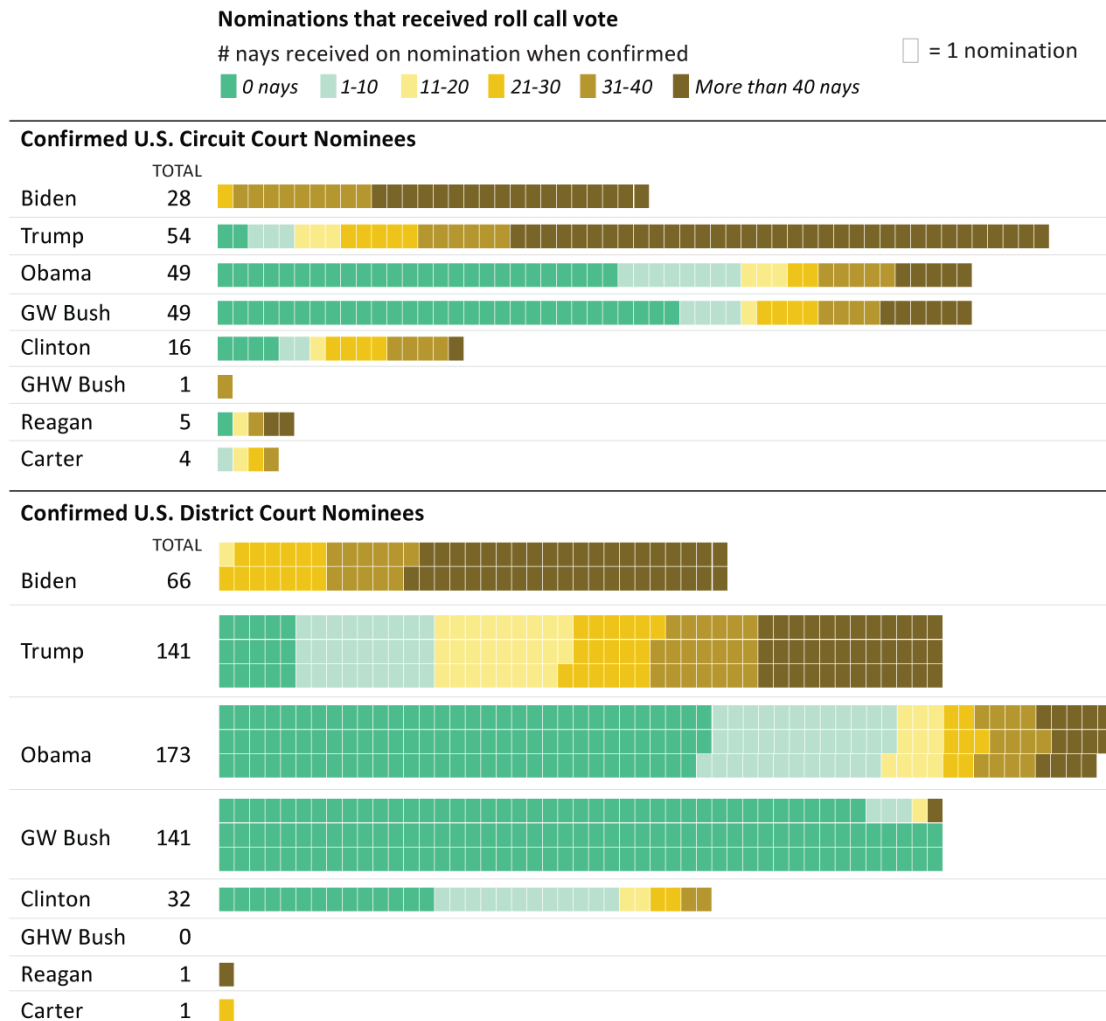
⁷⁹ Specifically, 66 of 68 district court nominees confirmed during 2021-2022 were confirmed by roll call vote.

⁸⁰ 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.

⁸¹ 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 the Time of Confirmation

(From the Carter presidency through the first two years of the Biden presidency)

**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 from the Carter presidency through the first two years of the Biden presidency (2021-2022). 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 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.

During the Trump presidency, many circuit court nominees were confirmed with historically high levels of opposition by the Senate minority party.⁸² Specifically, only 2 (3.7%) of 54 circuit court 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.

During the first two years of the Biden presidency (2021-2022), there were no circuit court nominees confirmed with zero nay votes (and none confirmed with fewer than 29 nay votes). Of the 28 nominees confirmed during the 2021-2022 period, a majority (18, or 64.3%) were confirmed after having received more than 40 nay votes. Another 9 nominees (32%) were confirmed after having received between 31 and 40 nay votes and 1 nominee (4%) was confirmed after having received between 21 and 30 nay votes.

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).⁸³ During the first two years of the Biden presidency (2021-2022), the circuit court nominee confirmed with the greatest number of nay votes was Jennifer Sung, confirmed to the Ninth Circuit with 49 nay votes.

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, 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

⁸² 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 115th and 116th 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>.

⁸³ 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.

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 George W. Bush and Obama 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.

During the first two years of the Biden presidency (2021-2022), none of the 66 district court nominees confirmed by roll call vote received zero nay votes at the time of confirmation. A majority of nominees (41, or 62.1%, of 66) received more than 40 nay votes when confirmed by the Senate. Of the remaining 25 nominees, 1 (1.5%) received 16 nay votes; 13 (19.7%) received between 21 and 30 nay votes; and 11 (16.7%) received 31 to 40 nay votes.

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).

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).

During the first two years of the Biden presidency (2021-2022), two district court nominees each received 48 nay votes: Deborah L. Boardman (nominated to the District of Maryland) and Sarah E. Geraghty (nominated to the Northern District of Georgia).

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 completed presidency since the Carter Administration (and the first two years of the Biden presidency, 2021-2022).

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.⁸⁴ For example, floor statements by Senators in support of circuit or district court nominees frequently mention or emphasize the particular demographic characteristics of nominees who would enhance the diversity of the federal judiciary.⁸⁵

Gender

U.S. Circuit Court Nominees

Figure 7 shows that, for the seven completed presidencies during this period,⁸⁶ 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.⁸⁷

During the first two years of the Biden presidency (2021-2022), 75.0% of confirmed circuit court nominees were women.

For the seven completed presidencies during this period, the median number of women confirmed to U.S. circuit court judgeships was 12 (with the fewest number, 6, confirmed during the Reagan presidency and the greatest number, 24, confirmed during the Obama presidency).⁸⁸

⁸⁴ 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>.

⁸⁵ For recent examples, see Sen. Bob Casey, "Nomination of Arianna J. Freeman (Executive Calendar)," Remarks in the Senate, *Congressional Record*, daily edition, September 13, 2022, pp. S4550-S4551; Sen. Dick Durbin, "Judicial Nominations (Executive Session)," Remarks in the Senate, *Congressional Record*, daily edition, May 18, 2022, p. S2559; Sen. Mitch McConnell, "Judicial Nominations," Remarks in the Senate, *Congressional Record*, daily edition, November 17, 2020, p. S7020; Sen. John Cornyn, "Executive Session," Remarks in the Senate, *Congressional Record*, daily edition, December 14, 2017, p. S8025. See also 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.

⁸⁶ 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.

⁸⁷ Conversely, the percentage of confirmed U.S. circuit court nominees who were male ranged from a low of 56.4% during the Obama presidency to a high of 92.8% during the Reagan presidency. During the first two years of the Biden presidency (2021-2022), 25.0% of confirmed circuit court nominees were men.

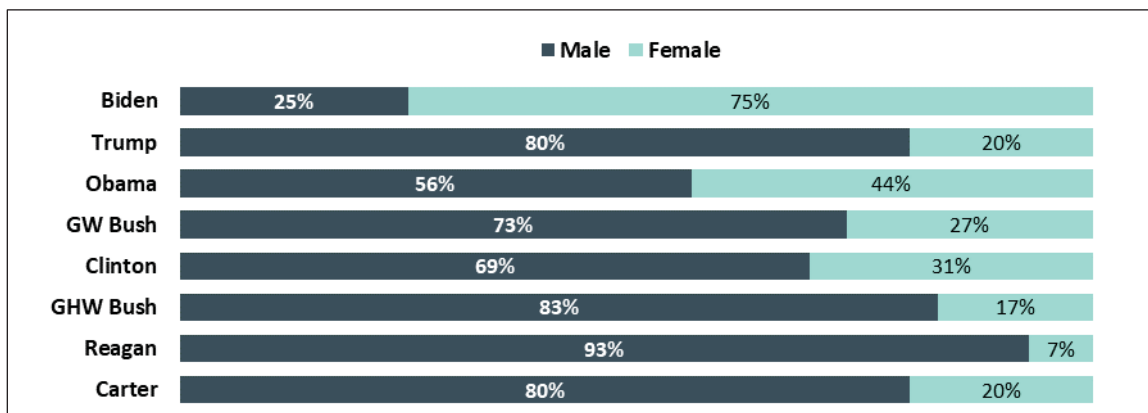
⁸⁸ The median number of men confirmed to U.S. circuit court judgeships by presidency during this period was 45 (with the fewest number, 31, confirmed during the Obama presidency and the greatest number, 77, confirmed during the

During the first two years of the Biden presidency (2021-2022), 21 women were confirmed as circuit court judges.⁸⁹

As of January 1, 2023 (following the first two years of the Biden presidency), less than 40% of active U.S. circuit court judges were women. Specifically, 65 (38%) of 171 active circuit court judges were women and 106 (62%) were men.

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

(From the Carter presidency through the first two years of the Biden presidency)



Source: Congressional Research Service.

Note: This figure shows the percentage of confirmed U.S. circuit court nominees by gender from the Carter presidency through the first two years of the Biden presidency (2021-2022).

U.S. District Court Nominees

As shown by **Figure 8**, for U.S. district court nominees confirmed during the seven completed presidencies during this period, 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.⁹⁰

During the first two years of the Biden presidency (2021-2022), 75.0% of confirmed district court nominees were women.

For the seven completed presidencies during this period, the median number of women confirmed to U.S. district court judgeships was 44 (with the fewest number, 24, confirmed during the Reagan presidency and the greatest number, 110, confirmed during the Obama presidency).⁹¹

Reagan presidency).

⁸⁹ During the first two years of the Biden presidency (2021-2022), seven men were confirmed as circuit court judges.

⁹⁰ 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. During the first two years of the Biden presidency (2021-2022), 25.0% of confirmed district court nominees were men.

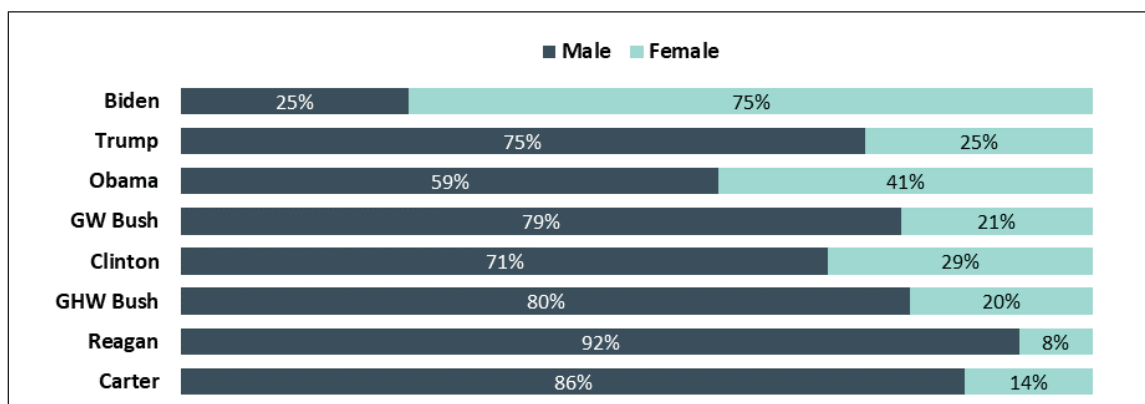
⁹¹ The median number of men confirmed to U.S. district court judgeships by presidency during this period was 174 (with the fewest number, 119, confirmed during the George H. W. Bush presidency and the greatest number, 266, confirmed during the Reagan presidency).

During the first two years of the Biden presidency (2021-2022), 51 women were confirmed as district court judges.⁹²

As of January 1, 2023 (following the first two years of the Biden presidency), less than 40% of active U.S. district court judges were women. Specifically, 224 (37%) of 605 active district court judges were women and 381 (63%) were men.

Figure 8. U.S. District Court Nominees: Percentage of Nominees Confirmed by Gender

(From the Carter presidency through the first two years of the Biden presidency)



Source: Congressional Research Service.

Note: This figure shows the percentage of confirmed U.S. district court nominees by gender from the Carter presidency through the first two years of the Biden presidency (2021-2022).

Race

Table 12 and **Table 13** show, for the seven completed presidencies and the first two years of the Biden presidency (2021-2022), 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).⁹³

U.S. Circuit Court Nominees

White Nominees

As shown by **Table 12**, for the seven completed presidencies during this period, 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.

During the first two years of the Biden presidency (2021-2022), 25.0% of confirmed circuit court nominees were White.

⁹² During the first two years of the Biden presidency (2021-2022), 17 men were confirmed as district court judges.

⁹³ 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.

The median number of White circuit court appointees confirmed by completed 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).

During the first two years of the Biden presidency (2021-2022), seven White nominees were confirmed as circuit court judges.

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.

During the first two years of the Biden presidency (2021-2022), 42.9% of confirmed circuit court nominees were African American.

The median number of African American circuit court appointees by completed 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).⁹⁴

During the first two years of the Biden presidency (2021-2022), 12 African American nominees were confirmed as circuit court judges.

Table 12. U.S. Circuit Court Nominees: Percentage Confirmed by Race
(From the Carter presidency through the first two years of the Biden presidency)

President	White	Nonwhite		
		African American	Hispanic	Asian American
Biden	25.0%	42.9%	14.3%	17.9%
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 table shows, from the Carter presidency through the first two years of the Biden presidency (2021-2022), 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 publicly available sources.

Hispanic Nominees

For the seven completed presidencies during this period, 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.

⁹⁴ The Trump presidency was the first presidency since the Ford presidency (1974-1977) that an African American individual was not appointed to a U.S. circuit court judgeship.

During the first two years of the Biden presidency (2021-2022), 14.3% of confirmed circuit court nominees were Hispanic.

The median number of Hispanic circuit court appointees by completed 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).

During the first two years of the Biden presidency (2021-2022), four Hispanic nominees were confirmed as circuit court judges.

Asian American Nominees

For the seven completed presidencies during this period, 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.

During the first two years of the Biden presidency (2021-2022), 17.9% of confirmed circuit court nominees were Asian American.⁹⁵

The median number of Asian American circuit court appointees by completed 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).

During the first two years of the Biden presidency (2021-2022), five Asian American nominees were confirmed as circuit court judges.

As of January 1, 2023 (following the first two years of the Biden presidency), less than one-third of active U.S. circuit court judges were non-White. Specifically, 54 (32%) of 171 active circuit court judges were non-White and 117 (68%) were White.

U.S. District Court Nominees

White Nominees

As shown by Table 13, for the seven completed presidencies during this period, 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.

During the first two years of the Biden presidency (2021-2022), 36.8% of confirmed district court nominees were White.

The median number of White district court appointees by completed 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).

During the first two years of the Biden presidency (2021-2022), 25 White nominees were confirmed as district court judges.

⁹⁵ This includes one nominee who identifies as Asian American/South Asian American.

African American Nominees

For the seven completed presidencies during this period, 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.

During the first two years of the Biden presidency (2021-2022), 22.1% of confirmed district court nominees were African American.

The median number of African American district court appointees by completed 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).

During the first two years of the Biden presidency (2021-2022), 15 African American nominees were confirmed as district court judges.

Table 13. U.S. District Court Nominees: Percentage Confirmed by Race

(From the Carter presidency through the first two years of the Biden presidency)

President	White	Nonwhite			
		African American	Hispanic	Asian American	Other
Biden	36.8%	22.1%	17.6%	11.8%	11.8%
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 table shows, from the Carter presidency through the first two years of the Biden presidency (2021-2022), 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 publicly available sources. The “Other” category includes American Indian nominees, biracial or multiracial nominees, or nominees for whom a race is unspecified.

Hispanic Nominees

For the seven completed presidencies during this period, 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.

During the first two years of the Biden presidency (2021-2022), 17.6% of confirmed district court nominees were Hispanic.

The median number of Hispanic district court appointees by completed 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).

During the first two years of the Biden presidency (2021-2022), 12 Hispanic nominees were confirmed as district court judges.

Asian American Nominees

For the seven completed presidencies during this period, 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.

During the first two years of the Biden presidency (2021-2022), 11.8% of confirmed district court nominees were Asian American.

The median number of Asian American district court appointees by completed 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).

During the first two years of the Biden presidency (2021-2022), eight Asian American nominees were confirmed as district court judges.

Other Nominees

For the seven completed presidencies during this period, the percentage of confirmed U.S. district court nominees in the “Other” category 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. For the purpose of this report, this category includes American Indian nominees, biracial or multiracial nominees, and any nominees for whom a racial background or ancestry is unspecified.

During the first two years of the Biden presidency (2021-2022), 11.8% of confirmed district court nominees were included in the “Other” category.

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).

During the first two years of the Biden presidency (2021-2022), eight nominees included in the “Other” category were confirmed as district court judges.

As of January 1, 2023 (following the first two years of the Biden presidency), less than one-third of active U.S. district court judges were non-White. Specifically, 180 (30%) of 605 active district court judges were non-White and 425 (70%) were White.

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