



JUDICIAL APPOINTMENTS MEMO

Thomas Jipping, Senior Legal Fellow

DATA AS OF MARCH 17 OF EACH PRESIDENT'S SECOND YEAR

ADVANCING AMERICAN
FREEDOM FOUNDATION

Background: [Article III](#) of the Constitution created the Supreme Court and gives Congress authority to create "inferior" courts with judges who serve "during good Behaviour."¹ This means they serve until they choose to leave or are removed following House [impeachment](#) and Senate conviction. Nominations to Article III courts are referred to the Senate Judiciary Committee and, if approved, listed on the [Senate Calendar](#). The Majority Leader decides which nominations to bring up for action.

Recorded Votes: Confirming by voice vote or unanimous consent does not require the presence of all Senators and takes *less than a minute*. Confirming by recorded vote requires Senators' presence and takes *45 minutes or more*. Forcing recorded votes, especially for unopposed nominations, slows the confirmation process.

Traditional Confirmation Process Norms:

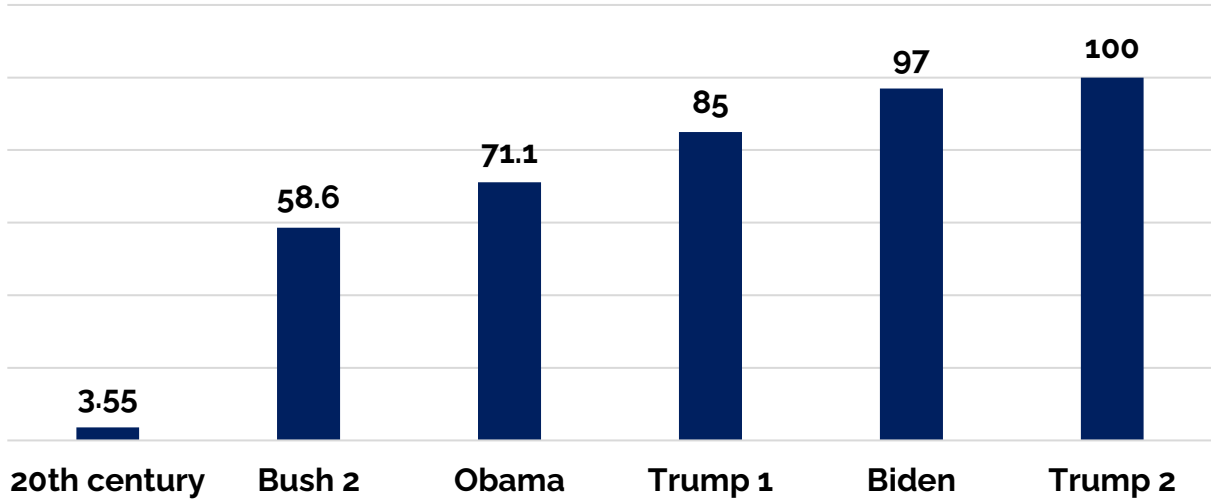
- The Senate confirmed most judicial nominations without opposition.
- Senators opposed very few judicial nominations by presidents of the other party.
- A very small percentage of judicial nominations had a separate vote under [Senate Rule 22](#) to invoke cloture, or end debate, before being confirmed.

President	% Vacant	% Hearing	% Confirmed	% Cloture Vote	Avg NO
Trump 2	4.25	82.2	73.3	100	43.9
Biden	9.1	58.5	58.5	100	37.25
Trump 1	16.5	71.8	34.1	96.55	22.55
Obama	12.1	89.8	38.8	10.5	4.7
Bush 2	11.3	48.9	44.6	0	.02
Clinton	14.2	66.7	62.3	0	0
Bush 1	9.2	52.4	54.8	0	0
Reagan	5.1	91.5	83.05	0	0

¹ [Article I](#) gives Congress authority to create "Tribunals inferior to the Supreme Court" which also require presidential nomination and Senate confirmation. The current Article I tribunals are the U.S. Court of Federal Claims (16 positions), U.S. Tax Court (19 positions), U.S. Court of Appeals for the Armed Forces (five positions), and U.S. Court of Appeals for Veterans Claims (seven positions). Judges on these tribunals serve for 15-year terms. Data in this *Judicial Appointments Memo* are for judges on Article III courts.

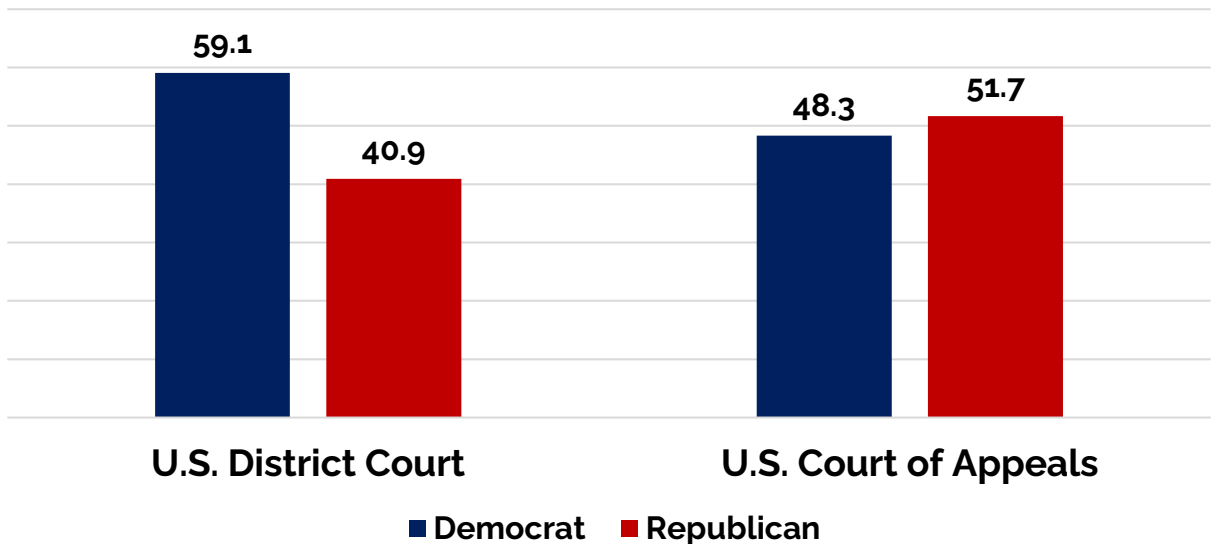


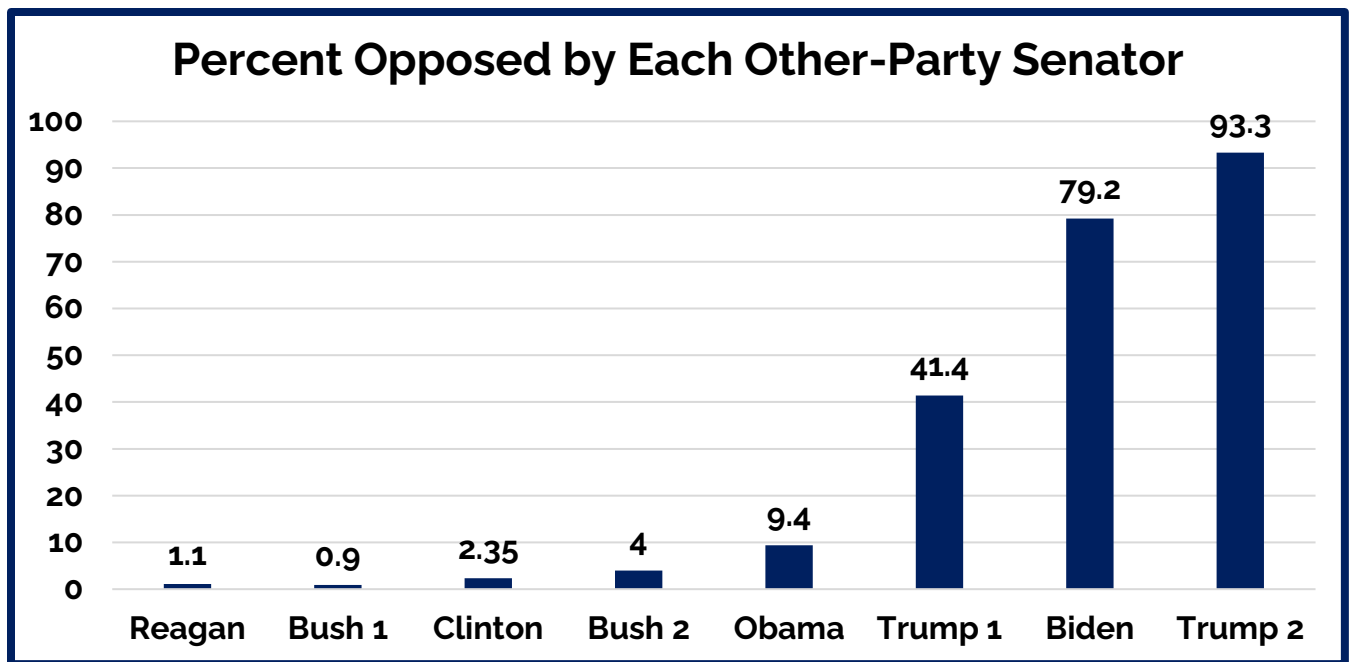
Percent Confirmed by Recorded Vote



86% of the recorded votes on President GW Bush's judicial nominations were unanimous – no opposition. Democrats forced SIX TIMES as many recorded votes on his unopposed nominations as in all of American history combined.

Percent of Current Active Judges





Supreme Court Confirmation Factoids

- The Senate Judiciary Committee first held a Supreme Court confirmation hearing in 1916 for Louis Brandeis, nominated by President Woodrow Wilson.
- Eight Supreme Court nominees were confirmed without attending their hearing; the most recent was Earl Warren, nominated by President Dwight Eisenhower, in 1953.
- Eleven Supreme Court nominees were confirmed without a confirmation hearing; the most recent was Harold Burton, nominated by President Harry Truman, in 1945.
- Six Supreme Court nominees were confirmed the same day they were nominated; the most recent was James Byrnes, nominated by President Franklin Roosevelt, in 1941.

