



JUDICIAL APPOINTMENTS MEMO

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DATA AS OF MARCH 23 OF EACH PRESIDENT'S SECOND YEAR

ADVANCING AMERICAN
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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.

Cloture Votes: Debate must end before the Senate can vote on a bill or nomination. Ending debate on bills required *unanimous consent* between 1806 and 1917, when the Senate adopted [Rule 22](#) to set a specific supermajority – today it's 60 votes. Rule 22 has applied to nominations since 1949, when it was broadened to apply to any pending "matter." A *filibuster* occurs when an attempt to end debate fails.

Traditional Confirmation Process Norms:

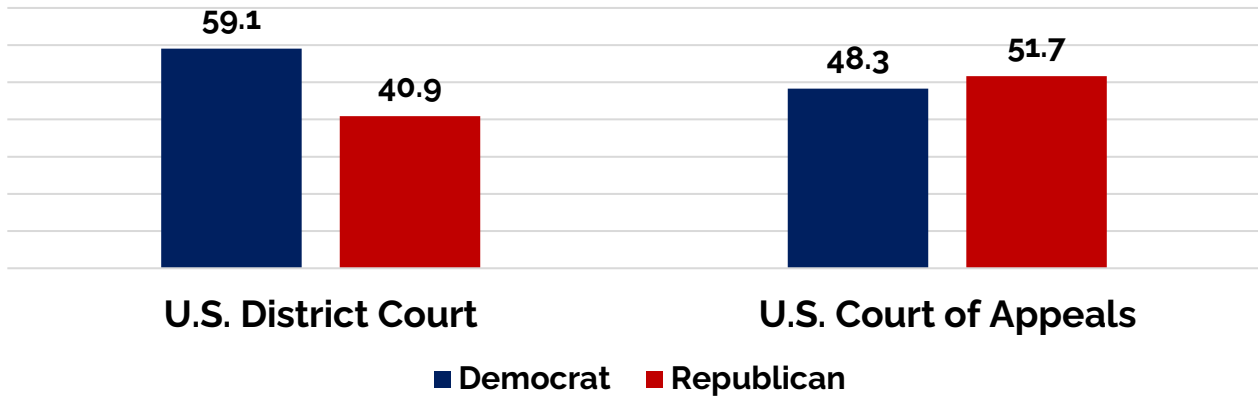
- The Senate confirmed most judicial nominations without opposition.
- Senators opposed very few judicial nominations by presidents of the other party.
- A very small percentage of judicial nominations had a separate vote under [Senate Rule 22](#) to invoke cloture, or end debate, before being confirmed.

President	% Vacant	% Hearing	% Confirmed	% Cloture Vote	Avg NO
Trump 2	4.2	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	95.9	38.8	10.5	4.7
Bush 2	11.3	48.9	41.8	0	.02
Clinton	14.2	65.3	57.3	0	0
Bush 1	9.2	58.1	53.5	0	0
Reagan	5.1	91.5	83.05	0	0

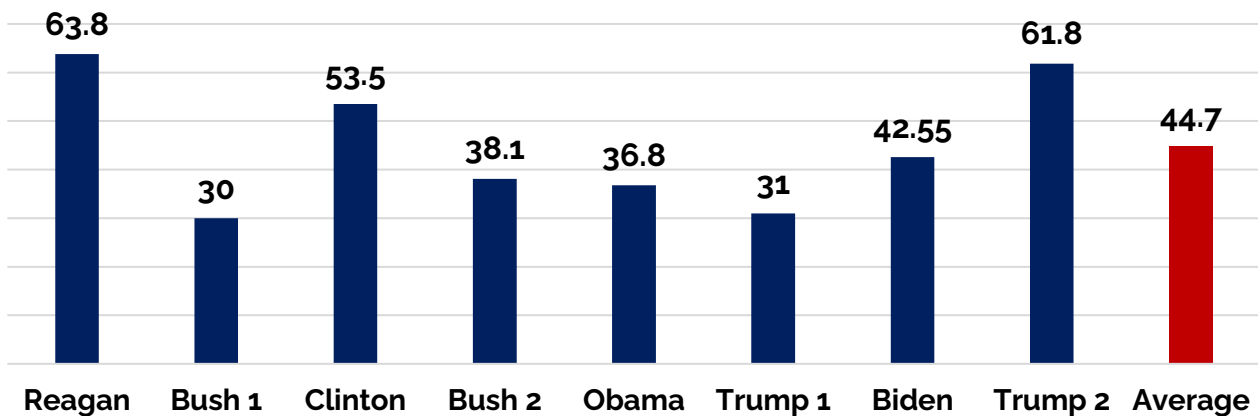
¹ [Article I](#) gives Congress authority to create "Tribunals inferior to the Supreme Court" which also require presidential nomination and Senate confirmation. The current Article I tribunals are the U.S. Court of Federal Claims (16 positions), U.S. Tax Court (19 positions), U.S. Court of Appeals for 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 of Current Active Judges



Percent Replacing Other-Party Judges



Percent of Cloture Votes on Judicial Noms



90% of all cloture votes on judicial nominations have occurred since 2013, when the Senate voted to make cloture on nominations a simple, rather than a super, majority.

