



JUDICIAL APPOINTMENTS MEMO

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DATA AS OF MAY 11 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" courts¹ with judges who serve "during good Behaviour."² Nominations to Article III courts are referred to the Senate Judiciary Committee and, if approved, listed on the [Executive Calendar](#). The Majority Leader decides which nominations to bring up for action.

Confirmations per Congress: Because the size of the judiciary increases, the best measure is the % of the judiciary confirmed per Congress. The Senate confirmed an average of 7.5% per Congress during the 18th century, 7.6% per Congress during the 20th century, and 8% per Congress so far in the 21st century.

Average Judicial Appointments: Since 1980, presidents have appointed an average of 48 judges each year to Article III courts.

President	Vacant	Emergencies	Hearing	Confirmed	Cloture Vote	Avg NO
Trump 2	3.9%	38.2%	86.3%	72.5%	100%	44.1
Biden	8.7%	38.7%	66.7%	69%	100%	38.8
Trump 1	16.5%	50.7%	64%	31.5%	97%	20.3
Obama	11.7%	39.6%	86.7%	48.3%	6.9%	4.2
Bush 2	10.4%	31.8%	54.45%	48.5%	0%	.02
Clinton	12.9%	60.2%	57%	69.8%	1.7%	1.1
Bush 1	7.5%	N/A	77.4%	81.1%	0%	0
Reagan	4.5%	N/A	92.1%	79.4%	0%	0
Average	9.5%	43.2%	73.05%	62.5%	38.255%	13.8

¹ These are the U.S. Court of Appeals (179 positions), U.S. District Court (673 positions), and U.S. Court of International Trade (9 positions). Unless indicated otherwise, data in this *Judicial Appointments Memo* are for Article III courts.

² [Article I](#) gives Congress authority to create "Tribunals inferior to the Supreme Court" which require presidential nomination and Senate confirmation but serve for 15-year terms. These 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).



Confirmation Records

Record	Winner	Total Confirmed	% of Judiciary	Cloture Votes	Roll Calls	Total NO	Avg NO
President (two terms)	Reagan 1981-82	383	54	3	10	214	.6
President (one term)	Carter 1977-80	258	42.1	1	5	99	.5
Congress	96 th 1979-80	198	30.2	1	5	99	.5
Year	1979	135	20.7	0	4	89	.7
Day	10/7/94	26	3.1	0	0	0	0

The Senate confirmed more of the judiciary on Oct. 7, 1994 (26 judges, 3.1% of the judiciary) than it did during the entire 114th Congress in 2015-16 (22 judges, 2.55%).

Future Vacancies

- Judges on Article III courts serve until they choose to leave or are removed by impeachment and conviction.
- As of today, [10 judges](#) have announced that they will be taking "senior status" either on a specific date between now and January 27 or "TBD."
- President Trump has made nominations to four of these future vacancies, three on the U.S. Court of Appeals for the 2nd, 6th, and 8th Circuits (each a George W. Bush appointee) and one on the U.S. District Court in Montana (an Obama appointee)

