



JUDICIAL APPOINTMENTS MEMO

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DATA AS OF JUNE 9 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: The Senate confirmed an average of 7.5% of the judiciary per Congress during the 18th century, 7.6% per Congress during the 20th century, and 8% per Congress so far in the 21st century. The highest was 31.4% during the 24th Congress (1835-36) and the lowest was 2.56% during the 114th Congress (2015-16).

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	3.4%	40%	80.7%	70.2%	100%	44.1
Biden	8.7%	37.3%	78.3%	73.9%	98.5%	39.5
Trump 1	16.3%	51.4%	61.8%	32.1%	90.5%	20.7
Obama	12%	38.8%	93.4%	52.5%	6.25%	3.8
Bush 2	10.5%	40.4%	58.65%	48.1%	0%	.4
Clinton	12.05%	55.4%	62.2%	71.1%	1.6%	1.1
Bush 1	6.8%	N/A	76.4%	80%	0%	0
Reagan	5.4%	N/A	94%	74.6%	0%	0
Average	9.4%	43.9%	75.7%	62.8%	37.6%	13.85

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).

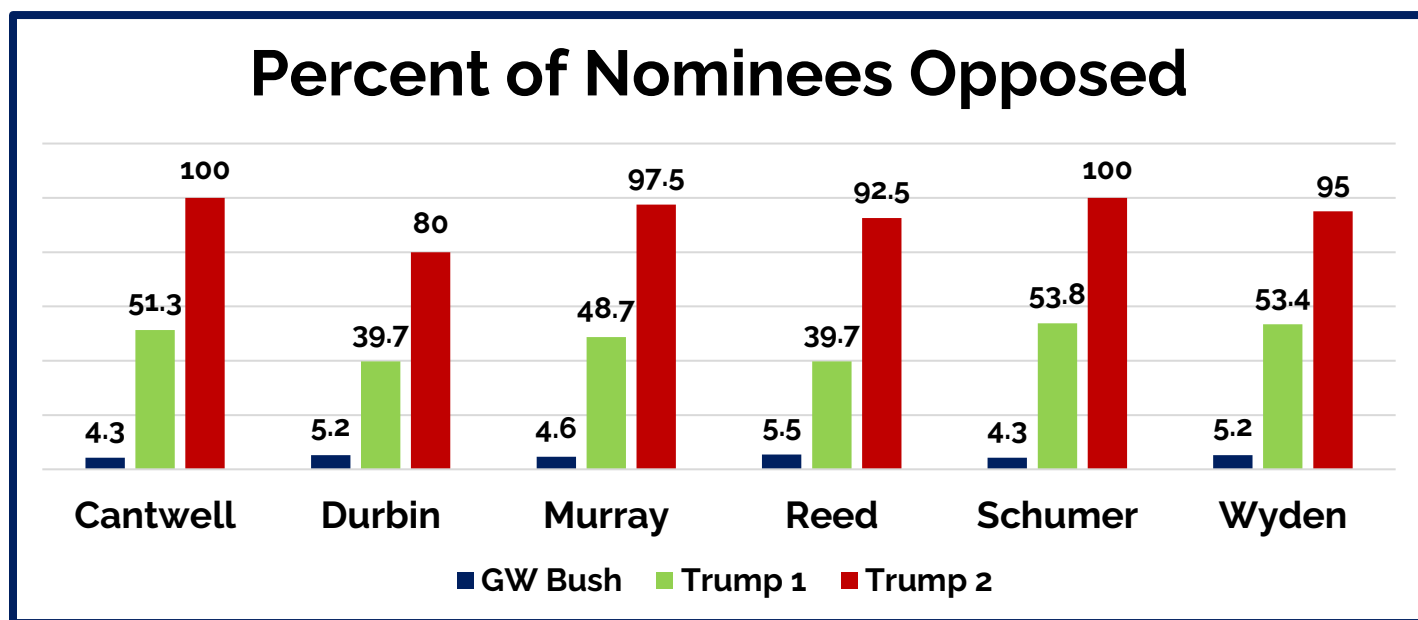


Each Senate Democrat has voted against an average of 93% of President Donald Trump's second-term judicial nominees, up from Republicans' average 79% opposition during the previous administration. Broad partisan opposition, however, is a recent phenomenon, initiated by Democrats during Trump's first term.

From Presidents Ronald Reagan through Barack Obama, Senators of one party voted against an average of just 3% of judicial nominees from presidents of the other party. The break from that pattern came with a 14-fold increase in Democrat opposition during Trump's first term.

This dramatic change is not explained by any difference in nominees' qualifications. Confirmed nominees received comparable ratings from the American Bar Association: 68% "well qualified" for Bush 2, 66% for Obama, 63% for Trump 1, and 62% (so far) for Trump 2. The demonstrable ABA bias against Republican judicial nominees³ makes such differences disappear.

Nor is it explained as routine partisanship. The graph below compares the percentage of judicial nominees opposed by six current Senate Democrats who also served during the previous two Republican administrations. The data clearly show they oppose nominees not because they are Republican but because they are from Trump.



³ See, e.g., Susan Navarro Smelcer, Amy Steigerwalt, and Richard L. Vinbing, Jr., Where One Side Affects Where Others Stand: Bias, the Bar, and Nominees to the Federal District Courts, 98 Judicature, 35 (2014); Susan Navarro Smelcer, Amy Steigerwalt, and Richard L. Vining, Jr., Bias and the Bar: Evaluating the ABA Ratings of Federal Judicial Nominees, 65 Pol. Res. Q. 827 (2012).

