EDWIN MEESE III INSTITUTE FOR THE RULE OF LAW

JUDICIAL APPOINTMENTS MEMO

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#33 - DATA BELOW AS OF NOVEMBER 4 OF EACH PRESIDENT'S SECOND YEAR

Background: Article III of the Constitution created the Supreme Court and gave Congress authority to create "inferior" courts[1] 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.

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 2.6% during the 114th Congress (2015-16).

New Judgeships: The Supreme Court has had nine seats since 1869. Congress last created new U.S. Court of Appeals judgeships in 1990 (6.5% increase). Congress last created new U.S. District Court judgeships in 2003 (1.8% increase). Since 1970, the Article III judiciary has grown 74% vs. 68% for the US population.

President	Vacant	Emergencies	Hearing	Confirmed	Cloture Vote	Avg NO	% of Judiciary
Trump 2	3.2%	53.6%	94.5%	76.3%	100%	44.2	6.4
Biden	10%	32.6%	70.2%	60.4%	94%	38.9	9.8
Trump 1	14.2%	51.6%	88%	59.15%	65.2%	17.2	9.8
Obama	12.1%	48.1%	97.6%	51.8%	4.65%	3.9	5
Bush 2	9.3%	36.7%	83.7%	65.85%	3.7%	.7	9.55
Clinton	7%	40.7%	96.1%	80%	1%	.6	15.3
Bush 1	4.7%	N/A	85.7%	93.5%	0%	.1	9.6
Reagan	4.35%	N/A	100%	98.8%	0%	0	12.2
Average	***8.1%***	***44.8%***	***89.5%***	***75.6%***	***32.1%***	***13.3***	***9.7***

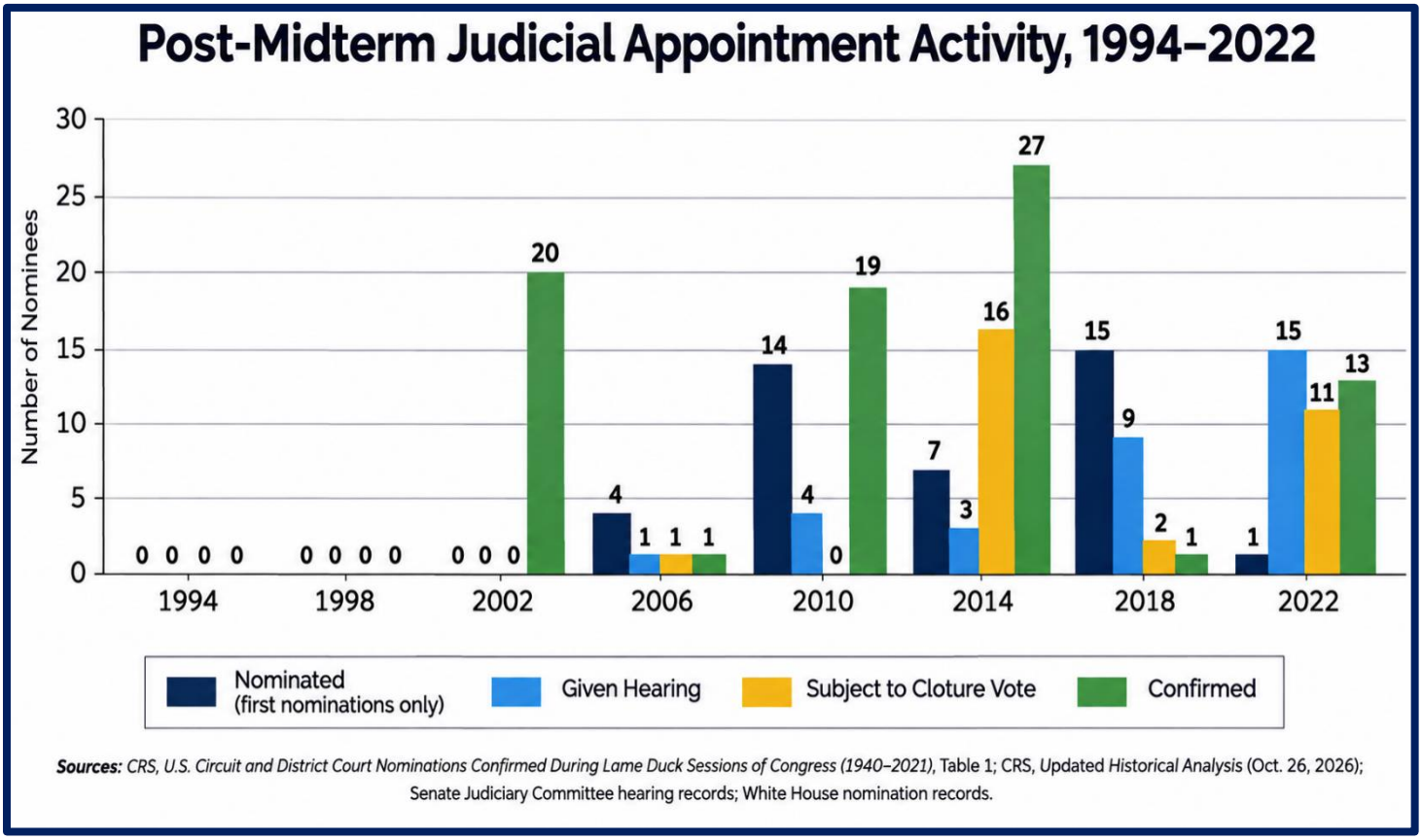
[1] These are the U.S. Ct of Appeals (179 positions), U.S. District Ct (673), and U.S. Ct of Int'l Trade (9). Unless indicated otherwise, data in this *Judicial Appointments Memo* are for Article III courts.

[2] Article I gives Congress authority to create "Tribunals inferior to the Supreme Court." which require nomination and confirmation but serve for 15-year terms. These are the U.S. Ct of Federal Claims (16 positions), U.S. Tax Ct (19), U.S. Ct of Appeals for the Armed Forces (5), and U.S. Ct of Appeals for Veterans Claims (7).

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Judicial Appointment Activity After Midterm Elections

Congress	Midterm Election	Result for President's Party		Adjournment
		House	Senate	
117th (2021-22)	11/8/22	-9	+1	1/3/23
115th (2017-18)	11/6/18	-41	+2	1/3/19
113th (2013-14)	11/4/14	-13	-9	12/16/14
111th (2009-10)	11/2/10	-63	-6	12/22/10
109th (2005-06)	11/7/06	-30	-6	12/9/06
107th (2001-02)	11/5/02	+8	+2	11/22/02
105th (1997-98)	11/3/98	+4	0	12/19/98
103rd (1993-94)	11/8/26	-54	-8	12/1/94



Sources: *CRS, U.S. Circuit and District Court Nominations Confirmed During Lame Duck Sessions of Congress (1940–2021)*, Table 1; CRS, Updated *Historical Analysis* (Oct. 26, 2026); Senate Judiciary Committee hearing records; White House nomination records.