EDWIN MEESE III INSTITUTE FOR THE RULE OF LAW

JUDICIAL APPOINTMENTS MEMO

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#34 - DATA BELOW AS OF NOVEMBER 9 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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Article III Nominations Pending in the Judiciary Committee

Nominee	Court	Vacancy		Incumbent	Nomination
		Current	Future		
Zachary West	E.D. OK	X		R	9/14/26
Lee Rudofsky	8th Cir.		X	R	9/14/26
Kyle Rearden	D. AK	X		R	9/14/26
Trevor Pemberton	N.D. OK	X		R	9/14/26
Jesus Osete	W.D. MO		X	R	9/14/26
Peter Mansfield	E.D. LA	X		R	9/14/26
Robert Long, Jr.	M.D. FL	X		R	9/14/26
Bradford Kelley	E.D. LA		X	R	9/14/26
Courtney Coker	N.D. TX	X		R	9/14/26
Richard Bennett	S.D. TX	X		R	9/14/26
Daniel Ballou	E.D. KY	X		R	9/14/26
Philip Axt	D. ND	X		R	9/14/26
Samuel Adkisson	E.D. TN	X		R	9/14/26

Article III Nominations Pending in the Senate

Nominee	Court	Vacancy		Incumbent	Nomination	Reported
		Current	Future			
Anna St. John	5th Cir.		X	R	7/14/26	9/24/26
Gregory Cook	N.D. AL	X		R	7/14/26	9/24/26
Daniel Domenico	10th Cir.		X	R	5/12/26	7/30/26

If All 16 Pending Nominations Are Confirmed…….

- President Trump will have appointed 72 judges to Article III courts, or ***8.28%*** of the judiciary, during the 119th Congress vs. an average of ***11.33%*** for the 97th – 119th Congresses (1981-2026)

- An 8.28% confirmation rate is lower than all but four of the 23 Congresses during this period

- Only 17 current vacancies (all U.S. District Court) would remain, equaling the total in December 1983; the judiciary, however, was 22% smaller in 1983

- The ***1.95%*** vacancy rate would be the lowest since June 1975

- The previous *Judicial Appointments Memo* provided data on judicial appointment activity after the last eight mid-term elections

    - 15 nominees received a Judiciary Committee after the 2022 midterm; 13 need a hearing today

    - The Senate confirmed 27 Article III nominations in 2014, 19 in 2010, and 20 in 2002; 16 would need confirmation this year

- President Trump's appointments during the 119th Congress will result in a net shift of 22 U.S. District Court seats and four U.S. Court of Appeals from a Democrat appointee to a Republican appointee