



# Final Action by the Senate on Supreme Court Nominations During Presidential Election Years (1789-2020)

October 20, 2020

On September 29, 2020, President Trump [nominated Judge Amy Coney Barrett](#) of Indiana to fill the vacancy created by the death of [Justice Ruth Bader Ginsburg](#). It has been [reported](#) that final action by the Senate on the nomination will occur prior to the presidential election on November 3, 2020. If such action occurs, the Barrett nomination will be the 22<sup>nd</sup> Supreme Court nomination that has received final action by the Senate during a presidential election year (and the 19<sup>th</sup> that received final action prior to the election itself).

Seven [Supreme Court nominations](#) that were pending before the Senate during a presidential election year are not included in the analysis below. These nominations include (1) three nominations on which the Senate took no action, including the [nomination of Judge Merrick Garland](#) in 2016; (2) two nominations for which the nominees declined the nominations; and (3) one nomination for which a motion to proceed on the nomination was objected to and the nomination was never submitted to the [Senate Judiciary Committee](#). Further information about these particular nominations are available from the author upon request by congressional readers.

For comprehensive analysis of the Supreme Court nomination and confirmation process, see [CRS Report R44235](#) (addressing the selection of a nominee by a President), [CRS Report R44236](#) (addressing the role of the Senate Judiciary Committee in processing nominations), and [CRS Report R44234](#) (addressing Senate debate and final action on nominations).

[Some Senators](#) have called for the Ginsburg vacancy to be filled after the inauguration of the winner of the presidential election on November 3, 2020. [Other Senators](#) have called on the Senate to consider President Trump's [nominee](#) for the vacancy, [Judge Amy Coney Barrett](#), prior to the election. This Insight does not take a position as to when the Senate should confirm a nominee to the Ginsburg vacancy.

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## Senate Confirmation of Supreme Court Nominations During Presidential Election Years

As shown by **Figure 1**, 17 (81%) of 21 Supreme Court nominations that received final action by the Senate during past presidential election years were confirmed. A majority of the nominations confirmed by the Senate during presidential election years occurred in either the 18<sup>th</sup> or 19<sup>th</sup> centuries—specifically, 11 (65%) of 17 such nominations were approved during election years prior to 1900. The most recent occurrence of a nomination being confirmed by the Senate during a presidential election year occurred in 1988 with the confirmation of [Anthony M. Kennedy](#).

Of the 17 nominations confirmed by the Senate during presidential election years, 13 (76%) featured unified party control (i.e., the party of the President was the same as the Senate majority party) and 4 (24%) featured divided party control (i.e., the party of the President was different than the Senate majority party). The most recent occurrence of a nomination being confirmed during a presidential election year that featured unified party control was in 1940 (with the confirmation of [Frank Murphy](#) during the Franklin D. Roosevelt presidency). The most recent occurrence of a nomination being confirmed during a presidential election year that featured divided party control was in 1988 (with the confirmation of [Anthony M. Kennedy](#) during the Reagan presidency).

Of the 17 nominations confirmed by the Senate during presidential election years, 14 (82%) were confirmed prior to the election while 3 (18%) were confirmed after the election.

For the 14 nominations confirmed during presidential election years (and that were also confirmed by the Senate prior to the election), the average number of days from confirmation to the presidential election was 218 days (or approximately 7 months). The median number of days from confirmation to the presidential election was 235 days (or nearly 8 months).

The shortest length of time from confirmation of a Supreme Court nominee to the occurrence of a presidential election was 105 days (with the confirmation of [George Shiras Jr.](#) in July of 1892). The greatest length of time was 295 days (with the confirmation of [Lucius Lamar](#) in January of 1888).

In contrast, as shown by the figure, the three nominations that were approved by the Senate *after* a presidential election occurred relatively soon after the election (within 28 to 49 days of the election).

## Other Types of Final Senate Action on Supreme Court Nominations During Presidential Election Years

As shown by **Figure 1**, there have been four Supreme Court nominations during presidential election years on which the Senate took final action other than to confirm the nominations. Three of the four nominations occurred in 1844 during the [presidency of John Tyler](#). The Senate voted to table two of Tyler's nominations and rejected a third nomination in a floor vote.

The most recent Supreme Court nomination that received a final action other than confirmation by the Senate during a presidential election year was the nomination in 1968 by President Johnson of [Abe Fortas](#) to the Chief Justice position (in anticipation of [Chief Justice Earl Warren](#)'s retirement). The Fortas nomination was reported favorably by the Senate Judiciary Committee, but the Senate later [failed to invoke cloture](#) on the nomination.

## The Barrett Nomination

The Barrett nomination has [been scheduled to be voted upon](#) by the [Senate Judiciary Committee](#) on October 22, 2020. It has also been [reported](#) that the nomination will be considered by the full Senate in late October. As shown by **Figure 1**, if final action concludes prior to November 3, 2020, this would be

the shortest length of time from final action to a presidential election date for any nomination that received final action by the Senate during a presidential election year (confirmed or otherwise).

**Figure I. Final Senate Action on Supreme Court Nominations During Presidential Election Years (1789 to 2020)**

Departed Justice (Reason for vacancy) <sup>1</sup>	Nominating President	Nominee (Year nominated)	Final action on nomination and timing around election	Presidential Election Day	
				Days before	Days after
Jay (Resigned)	Washington <sup>2</sup>	Ellsworth <sup>3</sup> (1796)	Confirmed ✓ 245 days		
Blair (Resigned)	Washington <sup>2</sup>	Chase (1796)	Confirmed ✓ 282		
Moore (Resigned)	★ Jefferson	Johnson (1804)	Confirmed ✓ 223		
Duvall (Resigned)	Jackson	Barbour (1835)	Confirmed ✓ 233		
Marshall (Death)	Jackson	Taney <sup>3</sup> (1835)	Confirmed ✓ 233		
Baldwin (Death)	Tyler	King (1844)	Nomination tabled ❌ 139		
Thompson (Death)	Tyler	Walworth <sup>4</sup> (1844)	Nomination tabled ❌ 137		
Thompson (Death)	Tyler	Spencer (1844)	Rejected ❌ 275		
Taney (Death)	★ Lincoln	Chase <sup>3</sup> (1864)		28 ✓ Confirmed	
Nelson (Retired)	★ Grant	Hunt (1872)		36 ✓ Confirmed	
Strong (Retired)	Hayes	Woods (1880)		49 ✓ Confirmed	
Woods (Death)	★ Cleveland	Lamar (1887)	Confirmed ✓ 295		
Waite (Death)	★ Cleveland	Fuller <sup>3</sup> (1888)	Confirmed ✓ 109		
Bradley (Death)	★ Harrison	Shiras (1892)	Confirmed ✓ 105		
Harlan (Death)	★ Taft	Pitney (1912)	Confirmed ✓ 237		
Hughes (Resigned)	★ Wilson	Clarke (1916)	Confirmed ✓ 106		
Lamar (Death)	★ Wilson	Brandeis (1916)	Confirmed ✓ 159		
Holmes (Retired)	★ Hoover	Cardozo (1932)	Confirmed ✓ 258		
Butler (Death)	★ FDR	Murphy (1940)	Confirmed ✓ 294		
Warren (N/A) <sup>5</sup>	Johnson	Fortas (1968)	Cloture motion rejected ❌ 35		
Powell (Retired)	Reagan	Kennedy (1987)	Confirmed ✓ 279		
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Ginsburg (Death)	★ Trump	Barrett (2020--Pending)	To be determined <sup>6</sup> →		

= Political party of President different from majority party in Senate
 ★ = Nominating President running for re-election
✓ = Nominee confirmed
❌ = Nominee not confirmed

- The 'retired' category also includes any Justice who assumed senior status.
- President Washington remained officially non-partisan during his presidency.
- Nominated to Chief Justice position.
- Reuben H. Walworth was subsequently nominated twice more by President Tyler to the same vacancy but neither nomination was referred to the Senate Judiciary Committee.
- The Fortas nomination was made in anticipation of Chief Justice Warren assuming senior status but before an actual vacancy on the Court occurred.
- As of the publication date of this Insight (October 20, 2020), there are 14 days prior to the November 3, 2020 election.

Source: Congressional Research Service.

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