



# Supreme Court Vacancies During Midterm Election Years (1914-2022)

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This Insight provides historical data and analysis related to [Supreme Court](#) vacancies that occurred during midterm election years since 1914, the first presidential midterm year during which regular Senate elections were held following the ratification of the [Seventeenth Amendment](#) in 1913.

Additional information about the Supreme Court appointment process can be found in CRS reports related to a [President's selection of a nominee, consideration by the Senate Judiciary Committee, and Senate debate and confirmation vote](#).

From 1914 to 2022, there were a total of 54 vacancies on the Supreme Court. Of these 54 vacancies, 22 (41%) occurred during a midterm election year, most recently in 2022. Of the remaining vacancies, 26 (48%) occurred during an odd-numbered year and 6 (11%) occurred during a presidential election year.

Of the 22 vacancies that occurred during a midterm election year, 19 (86%) are included in the analysis below. These 19 vacancies all occurred prior to the November election date and, if announced, were not announced earlier than January 1 of the election year itself.

Consequently, a vacancy that was [announced in 2005](#) but did not occur until 2006 is not included in the analysis. Specifically, Justice [Sandra Day O'Connor](#) announced on July 1, 2005, that she would step down from the Court upon the confirmation of her successor, which occurred on January 31, 2006. Additionally, two vacancies that occurred after the midterm election date in 1922 are excluded from the analysis. Justice [William R. Day](#) announced on October 24, 1922 his intention to retire from the Court, and he subsequently stepped down on November 13, 1922 (six days after the election). Justice [Mahlon Pitney](#) announced on December 16, 1922, his intention to step down from the Court, and he later resigned on December 31, 1922.

As shown by **Figure 1**, 13 (68%) of the 19 vacancies included in the analysis were the result of a Justice retiring or resigning, 5 (26%) were the result of the death of a Justice, and 1 was the result of an Associate Justice being elevated to the [Chief Justice position](#). The most recent vacancy that arose during a midterm election year as the result of a death of a sitting Justice occurred in 1954.

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**Figure I. Supreme Court Vacancies During Midterm Election Years (1914-2022)**

President (Party)	Departed Justice	Vacancy Reason and Date Occurred (Announced)	Days between when vacancy occurred or was announced and midterm election date <sup>1</sup>
Biden (D)	Breyer, Stephen G.	● 06/30/2022 (01/27/2022)	285 days
Trump (R)	Kennedy, Anthony M.	● 07/31/2018 (06/27/2018)	132
Obama (D)	Stevens, John Paul	● 06/30/2010 (04/09/2010)	207
Clinton (D)	Blackmun, Harry A.	● 08/03/1994 (04/06/1994)	216 ↻
Bush, GHW (R)	Brennan, William, Jr.	● 07/20/1990	109
Reagan (R)	Rehnquist, William H.	● 09/26/1986 (06/17/1986) <sup>2</sup>	140 ↻
Reagan (R)	Burger, Warren E. ★	● 09/26/1986 (06/17/1986)	140 ↻
Kennedy (D)	Frankfurter, Felix	● 08/28/1962	70
Kennedy (D)	Whittaker, Charles E.	● 03/31/1962 (03/29/1962)	222
Eisenhower (R)	Burton, Harold H.	● 10/13/1958 (10/06/1958) <sup>3</sup>	29
Eisenhower (R)	Jackson, Robert H.	● 10/09/1954	24 ↻
Truman (D)	Stone, Harlan F. ★	● 04/22/1946	197 ↻
Roosevelt (D)	Byrnes, James F.	● 10/03/1942	31
Roosevelt (D)	Cardozo, Benjamin N.	● 07/09/1938	122
Roosevelt (D)	Sutherland, George	● 01/17/1938 (01/05/1938)	307
Hoover (R)	Sanford, Edward T.	● 03/08/1930	241
Hoover (R)	Taft, William H. ★	● 02/03/1930	274
Harding (R)	Clarke, John H.	● 09/18/1922 (09/01/1922)	67
Wilson (D)	Lurton, Horace H.	● 07/12/1914	114
Senate majority party was different from President's party before election.			Senate majority party changed after election. ↻

Reason for vacancy: ● Retired/resigned ● Death ● Elevated to Chief Justice position  
 ★ Chief Justice

1. If a Justice announced his intention to retire/resign prior to the date he stepped down from the Court, the announcement date is used to calculate the number of days to the midterm election date.
2. On June 17, 1986, Chief Justice Warren Burger announced his retirement from the Court. On the same date, President Reagan announced his intent to nominate Associate Justice William H. Rehnquist to the Chief Justice position, thereby creating an anticipated future vacancy for an Associate Justice position on the Court.
3. Historical records indicate Justice Burton wrote to President Eisenhower on July 17, 1958, to inform the President of his intent to step down from the Court. The public announcement of Justice Burton's decision was made on October 6, 1958.

**Source:** Congressional Research Service, based on information from publicly available sources.

**Notes:** **Figure I** includes vacancies that occurred prior to the November election date and, if announced, were not announced earlier than January 1 of the election year itself. Consequently, a vacancy that occurred in 2006 and two vacancies that occurred in 1922 are not included in **Figure I** (see text for additional information).

The 19 vacancies occurred across 15 different midterm election years, with two vacancies occurring in each of 1930, 1938, 1962, and 1986 during the Hoover, Roosevelt, Kennedy, and Reagan presidencies, respectively.

Senate majority party control changed for the incoming Congress following four of the midterm election years (1946, 1954, 1986, and 1994).

Of the 19 vacancies, 3 were for the position of Chief Justice—these vacancies occurred in 1930, 1946, and 1986 during the Hoover, Truman, and Reagan presidencies. The nominees confirmed to these vacancies were [Charles E. Hughes](#), [Fred Vinson](#), and [William H. Rehnquist](#), respectively.

The average length of time from the date on which a Justice publicly announced his intention to step down from the Court (or from the date when the actual vacancy occurred if no public announcement was made, e.g., if a Justice died while serving on the Court) to the midterm election date for a particular year was 154 days (5.1 months). The median length of time was 140 days (4.6 months).

The length of time from vacancy announcement to the midterm election date has been greater than 154 days for several of the more recent vacancies on the Court. Specifically, for three of the four most recent vacancies during a midterm election year, a Justice announced his intention to step down from the Court more than 200 days before the election—these include the vacancies created by the departures of Justices [Harry A. Blackmun](#) (216 days prior to the election), [John Paul Stevens](#) (207 days), and [Stephen G. Breyer](#) (285 days).

The longest length of time from the date on which a Justice publicly announced his intention to step down from the Court (or from the date of the actual vacancy if no public announcement was made) to the midterm election date was 307 days (10.1 months), when Justice [George Sutherland](#) announced on January 5, 1938, that he would be stepping down from the Court (the vacancy occurred on January 17, 1938). The shortest length of time was 24 days, when Justice [Robert H. Jackson](#) died on October 9, 1954. Among Justices who announced their intention to retire or resign from the Court, the shortest length of time was 29 days, when Justice [Harold H. Burton](#) announced on October 6, 1958, that he would assume senior status (the vacancy occurred on October 13, 1958).

Of the 19 vacancies, 15 (79%) had a nominee confirmed to the vacancy prior to the election date. Of these 15 vacancies, one had multiple nominations prior to a new Justice being appointed. President Hoover nominated [John J. Parker](#) on March 21, 1930, to fill the vacancy created by the death of Justice [Edward T. Sanford](#). The Parker nomination was [rejected by the Senate](#) on May 7, 1930, and President Hoover subsequently nominated [Owen J. Roberts](#) on May 9, 1930. The Roberts nomination was approved by the Senate on May 20, 1930.

Of the four vacancies for which a nominee was not confirmed prior to the midterm election date, one was filled with a recess appointment prior to the election. [Potter Stewart](#) received a recess appointment from President Eisenhower on October 14, 1958, to a seat vacated by Justice Harold H. Burton. Justice Stewart was nominated to the same position by President Eisenhower on January 17, 1959, and confirmed by the Senate on May 5, 1959. Three other vacancies for which a nominee was not confirmed prior to the election did not have nominations submitted for them until after the election. These nominations were for the vacancies created by the departures of Justices [Benjamin N. Cardozo](#), [James F. Byrnes](#), and [Robert H. Jackson](#) in 1938, 1942, and 1954, respectively.

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