



CRS Report for Congress

U.S. Circuit and District Court Nominations: Rejections by the Senate and Votes by the Senate Judiciary Committee Other Than To Report Favorably, 1939-2007

Kevin M. Scott

Analyst on the Federal Judiciary
Government and Finance Division

Denis Steven Rutkus

Specialist on the Federal Judiciary
Government and Finance Division

Summary

Once a nomination to a U.S. district court or circuit court of appeals judgeship is submitted to the Senate by the President, the Senate almost invariably refers it to the Senate Judiciary Committee. If the Judiciary Committee schedules a vote on a nominee, it usually will vote on a motion to report the nomination favorably. However, the committee could also vote on a motion to report without recommendation, to report unfavorably, or to table the nomination. If the committee votes to report — whether favorably, without recommendation, or unfavorably — the nomination moves to the full Senate, which, if it takes final action on the nomination, votes on whether to confirm or disapprove.

Between 1939 and 2007, the Senate Judiciary Committee voted other than favorably on 18 district or circuit court judicial nominations. In one other instance, the committee reported a district court nomination favorably, but the Senate rejected the nomination. This report lists the votes cast by the Judiciary Committee and the Senate on each of these 19 nominations and identifies senatorial courtesy, ideological disagreement, and concern over nominees' qualifications as among the circumstances that led to committee consideration of actions other than a favorable report. Senate and Senate Judiciary Committee actions on judicial nominations are discussed more generally in CRS Report RL31635, *Judicial Nomination Statistics: U.S. District and Circuit Courts, 1977-2003*, by Denis Steven Rutkus and Mitchel A. Sollenberger, and CRS Report RL31868, *U.S. Circuit and District Court Nominations by President George W. Bush During the 107th-109th Congresses*, by Denis Steven Rutkus, Kevin M. Scott, and Maureen Bearden. This report will be updated as events warrant.

Although the Senate has confirmed most of the thousands of U.S. circuit court and district court nominations submitted to it, some nominations do not receive Senate confirmation.¹ Neither the Judiciary Committee nor the full Senate is compelled to act on the nomination, and nominations that receive no action are eventually returned to the President.

Once the President submits a judicial nomination to the Senate, it almost invariably is referred to the Judiciary Committee.² The committee may then hold a hearing on the nomination. After the hearing, the committee has four basic options: “It may report the nomination to the Senate favorably, unfavorably, or without recommendation, or it may choose to take no action at all.”³ Typically, if the committee votes on the nomination, it votes to report favorably; however, in a small number of cases, the committee has voted to report the nomination either unfavorably or without recommendation. If a majority of the committee agrees to any one of the motions to report, the nomination moves to the full Senate. (The nomination fails to be reported on a tie vote.) By contrast, the nomination remains in committee if the committee votes against reporting, if there is no committee vote on the nomination, or if the committee votes to table the nomination.

Once a nomination is reported to the Senate by the Judiciary Committee, the Senate can consider the nomination.⁴ If the Senate disapproves the nomination, it is returned to the President with a resolution of disapproval.⁵ If a judicial nomination does not receive a Senate vote, the nomination ultimately will either be withdrawn by the President or

¹ This report was originally prepared by Mitchel A. Sollenberger, Analyst in American National Government at CRS. For statistics on the number of confirmations during the 1945-2007 time period, see CRS Report RL32122, *Judicial Nomination Statistics: U.S. District and Circuit Courts, 1945-1976*, by Mitchel A. Sollenberger; CRS Report RL31635, *Judicial Nomination Statistics: U.S. District and Circuit Courts, 1977-2003*, by Denis Steven Rutkus and Mitchel A. Sollenberger; CRS Report RL31868, *U.S. Circuit and District Court Nominations by President George W. Bush During the 107th-109th Congresses*, by Denis Steven Rutkus, Kevin M. Scott, and Maureen Bearden; and CRS Report RL33953, *Nominations to Article III Lower Courts by President George W. Bush During the 110th Congress*, by Denis Steven Rutkus, Kevin M. Scott, and Maureen Bearden. For information on judicial nominations from 1939 to 1945, consult the relevant volumes of the *Journal of the Executive Proceedings of the Senate*.

² “Senate Rule XXXI provides that nominations shall be referred to appropriate committees ‘unless otherwise ordered.’ In a few instances, by unanimous consent, the Senate has confirmed nominations without referral to a committee, particularly when the nominee is a current or former Senator.” CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki (under heading “Receipt and Referral”). (Hereafter cited as Rybicki, *Senate Consideration of Presidential Nominations*.)

³ *Ibid.* (under heading “Reporting”).

⁴ Prior to a final vote on the nomination, the Senate can recommit the nomination to the Judiciary Committee. In addition, debate on the nomination is subject to cloture. *Ibid.* (under heading “Consideration and Disposition”). Such procedural actions, however, are not considered in this report.

⁵ According to Senate Rule XXXI, rejected nominations “shall not be returned by the Secretary to the President until the expiration of the time limit for making a motion to reconsider,” which is three days after the confirmation vote is held.

returned to the President by the Secretary of the Senate upon a Senate adjournment or recess of more than 30 days.⁶

This report identifies, from the 76th Congress (1939-1941)⁷ through 2007 (the first session of the 110th Congress), 18 U.S. circuit court of appeals or district court nominations on which the Senate Judiciary Committee voted other than to report favorably and one nomination where the Judiciary Committee voted to report with a favorable recommendation but the nomination was rejected by the Senate.⁸ Specifically, **Table 1**, below, presents the nominations to the courts of appeals and district courts in separate sections. Within the two sections, nominations are arranged chronologically. From left to right, columns one, two, and three identify the Congress, nominee, and court of each nominee. Columns four through seven provide the Judiciary Committee vote on each nomination, stating the type of vote, vote breakdown, and date of the vote. Column eight provides information concerning what occurred in the Senate after the Judiciary Committee voted.

Among the seven court of appeals nominations listed in **Table 1**, five were never reported out of the Judiciary Committee; four of those nominations were returned to the President and one was withdrawn by the President. The remaining two nominations were reported without recommendation; one (Manion) was confirmed and one (Liebeler) was returned by the Senate. Of the 12 district court nominations listed in **Table 1**, four (including the nomination of William Poff, which was tabled) were never reported out of the Judiciary Committee; one of those nominations was returned and three were withdrawn by the President. Two nominations were reported to the Senate favorably; one (Collins) was confirmed, while the other (White) was rejected. One nomination (Holmes) was reported to the Senate without recommendation; that nomination was confirmed by the Senate. Five nominations were reported to the Senate unfavorably; all five were rejected by the Senate.

Senatorial courtesy was the stated reason for rejection in six of the first seven cases of Judiciary Committee votes on judicial nominations that were other than to report favorably.⁹ Floyd H. Roberts, nominated to be U.S. district court judge for the Western District of Virginia, was the first judicial nominee reported unfavorably by the committee

⁶ The Senate may, by unanimous consent, hold nominations over recesses of more than 30 days. Senators may exempt from unanimous consent one or more pending nominations, and have only rarely insisted on the return of all pending nominations. Rybicki, *Senate Consideration of Presidential Nominations*, p. 13.

⁷ The 76th Congress was the earliest in which Judiciary Committee votes could be found in the *Congressional Record* or the *Senate Committee on the Judiciary Legislative Calendar*.

⁸ See, in **Table 1**, the nomination of Ronnie White to the U.S. District Court for the Eastern District of Missouri.

⁹ The *American Congressional Dictionary* defines senatorial courtesy as “[t]he Senate’s practice of declining to confirm a presidential nominee for an office in the state of a senator of the president’s party unless that senator approves. Sometimes called ‘the courtesy of the Senate,’ the practice is a customary one and not always adhered to. A senator sometimes invokes the custom by declaring that the nominee is personally obnoxious or personally objectionable to him.” See Walter Kravitz, *Congressional Quarterly’s American Congressional Dictionary* (Washington: CQ Press, 2001), p. 231.

and rejected by the Senate within the 1939-2007 time period. The committee adversely reported Roberts in 1939 on the grounds that his nomination was “personally offensive” to the two Virginia Senators.¹⁰ As was the tradition under senatorial courtesy at that time, Roberts was adversely reported to the Senate, where he was rejected by a vote of 72 to 9. In each of the other five cases before 1951 in which senatorial courtesy was the stated reason for objecting to a judicial nomination, the opposing Senator stated that the nominee was “personally obnoxious.”¹¹ In one instance, the nomination was not reported out of committee.¹² The other four nominations were reported adversely and rejected by voice vote in the Senate.¹³

Between 1951 and 1978, no judicial nominations were reported without recommendation or unfavorably. During that time, one nomination, that of William Poff, to the U.S. District Court for the Western District of Virginia, was laid on the table by the Senate Judiciary Committee based on senatorial courtesy.¹⁴ Since 1978, Senators’ objections to nominations have rested largely on the perceived ideological orientation of judicial nominees, the professional qualifications of the nominees, or both.¹⁵ For example, Daniel Manion, nominated by President Reagan to the Seventh Circuit Court of Appeals, was criticized for lacking “the record of distinction and achievement that was expected of appointees to the courts of appeals,”¹⁶ while his supporters “argued that opposition to his nomination was based on his conservative views and his activities with his father,”¹⁷ who had co-founded the John Birch Society. Arguments made in support of and in opposition to the Manion nomination were similar to arguments made about other nominees whose nominations received a vote to report other than favorably since 1978.

¹⁰ National Archives and Records Administration, Record Group 46, Records of the U.S. Senate, 76th Cong., Records of Executive Proceedings, Nomination Files, Judiciary Committee, Hearings on Nomination of Floyd H. Roberts (1939), p. 84.

¹¹ The nominees were James V. Allred, M. Neil Andrews, Carroll D. Switzer, Joseph Drucker, and Cornelius J. Harrington.

¹² National Archives and Records Administration, Record Group 46, Records of the U.S. Senate, 78th Cong., Records of Executive Proceedings, Nomination Files, Judiciary Committee, James V. Allred, Blue Slip (1943); and Hearings on Nomination of James V. Allred (1943), pp. 5-7.

¹³ See *Congressional Record*, 81st Cong., 2nd sess., August 9, 1950, pp. 12104-12106; and *Congressional Record*, 82nd Cong., 1st sess., October 9, 1951, pp. 12838-12840.

¹⁴ Sheldon Goldman, *Picking Federal Judges: Lower Court Selection from Roosevelt through Reagan* (New Haven: Yale University Press, 1997), p. 210.

¹⁵ See, e.g., Lee Epstein and Jeffrey A. Segal, *Advice and Consent: The Politics of Judicial Appointments* (New York: Oxford University Press, 2005), ch. 4.

¹⁶ Sheldon Goldman, *Picking Federal Judges: Lower Court Selection from Roosevelt through Reagan* (New Haven: Yale University Press, 1997), p. 310.

¹⁷ *Ibid.*

Table 1. U.S. District and Circuit Court of Appeals Judicial Nominations: Rejection Votes by the Senate or Votes by the Senate Judiciary Committee Other Than To Report Favorably, 1939-2007

Congress	Nominee	Circuit/ District	Votes and Dates of Judiciary Committee Motions				Outcome of Nomination
			Table	Report Favorably	Report Without Recommendation	Report Unfavorably	
Nominations to the Circuit Courts of Appeals							
78 th	Allred, James V.	Fifth	—	9-9, 03/22/43 ^a	—	—	Returned, 07/08/43
99 th	Manion, Daniel A.	Seventh	—	9-9, 05/08/86 ^b	11-6, 05/08/86 ^b	—	Confirmed (48-46), 06/26/86
100 th	Liebeler, Susan W.	Federal	—	6-7, 02/23/88 ^c	8-5, 02/23/88 ^c	—	Returned, 10/22/88
100 th	Siegan, Bernard H.	Ninth	—	6-8, 07/14/88 ^d	7-7, 07/14/88 ^d	—	Withdrawn, 09/16/88
102 nd	Ryskamp, Kenneth L.	Eleventh	—	6-8, 04/11/91 ^e	7-7, 04/11/91 ^e	—	Returned, 08/02/91
107 th	Pickering, Charles W., Sr.	Fifth	—	9-10, 03/14/02 ^f	9-10, 03/14/02 ^f	9-10, 03/14/02 ^f	Returned, 11/20/02
107 th	Owen, Priscilla R.	Fifth	—	9-10, 09/05/02 ^g	9-10, 09/05/02 ^g	9-10, 09/05/02 ^g	Returned, 11/20/02
Nominations to the District Courts							
76 th	Roberts, Floyd H.	W.VA	—	3-14, 02/01/39 ^h	—	14-3, 02/01/39 ^h	Rejected (72-9), 02/06/39
79 th	Margold, Nathan R.	DC	—	6-6, 07/30/45 ⁱ	—	—	Returned, 08/01/45
81 st	Switzer, Carroll D.	S.IA	—	0-10, 07/31/50 ^j	—	10-0, 07/31/50 ^j	Rejected (voice vote), 08/09/50
81 st	Andrews, M. Neil	N.GA	—	1-9, 07/31/50 ^k	—	9-1, 07/31/50 ^k	Rejected (voice vote), 08/09/50
82 nd	Harrington, Cornelius J.	N.IL	—	2-6, 09/17/51 ^l	—	3-5, 09/17/51 ^l	Rejected (voice vote), 10/09/51
						10/08/51 ^m	
82 nd	Drucker, Joseph	N.IL	—	2-6, 09/17/51 ^l	—	3-4, 09/17/51 ^l	Rejected (voice vote), 10/09/51
						10/08/51 ^m	
94 th	Poff, William B.	W.VA	9-0, 05/05/76 ⁿ	—	—	—	Withdrawn, 06/07/76
95 th	Collins, Robert F.	E.LA	—	5-5, 04/14/78 ^o	—	—	Confirmed (voice vote), 05/17/78
				13-1, 05/16/78 ^o			
96 th	Winberry, Charles B., Jr.	E.NC	—	6-8, 03/04/80 ^p	—	—	Withdrawn, 08/06/80
99 th	Sessions, Jefferson B.	S.AL	—	8-10, 06/05/86 ^q	9-9, 06/05/86 ^q	—	Withdrawn, 07/31/86

Congress	Nominee	Circuit/ District	Votes and Dates of Judiciary Committee Motions				Outcome of Nomination
			Table	Report Favorably	Report Without Recommendation	Report Unfavorably	
106 th	White, Ronnie	E.MO	—	12-6, 07/22/99 ^r	—	—	Rejected (45-54), 10/05/99 ^r
108 th	Holmes, J. Leon	E.AR	—	—	10-9, 05/01/03 ^s	—	Confirmed (51-46), 07/06/04

Source: CRS Judicial Nominations Database.

Notes:

- a. *Legislative and Executive Calendar*, Committee on the Judiciary, 78th Cong., 1st sess., p. 5.
- b. Eric Effron, “Setback for Manion,” *The National Law Journal*, May 19, 1986, p. 2.
- c. Christopher Ladd and Terence Moran, “Nominees Liebler, Siegan Still Have Long Way to Go,” *Legal Times*, Feb. 29, 1988, p. 4.
- d. Linda Greenhouse, “Panel Rejects Court Nominee, Ending Bitter Battle,” *The New York Times*, July 15, 1988, p. A12.
- e. Neil A. Lewis, “Committee Rejects Bush Nominee to Key Appellate Court in South,” *The New York Times*, Apr. 12, 1991, p. A1.
- f. Jennifer A. Dlouhy, “Democrats Defeat Pickering on Party-Line Vote,” *CQ Daily Monitor*, Mar. 15, 2002, p. 1. Pickering was renominated in the 108th Congress, and received a recess appointment to the Fifth Circuit Court of Appeals on Jan. 16, 2004.
- g. Jennifer A. Dlouhy, “Republicans Vow Revenge as Owen Nomination is Defeated,” *CQ Daily Monitor*, Sept. 9, 2002, p. 8. Owen was renominated in the 108th and 109th Congresses, and was confirmed on May 25, 2005.
- h. *Congressional Record*, 80th Cong., 1st sess., July 1, 1947, p. 7990.
- i. Local Section, “Judge Margold Dies at 48; Funeral Will Be Held Today,” *Washington Post*, Dec. 17, 1947, p. B2.
- j. The *Legislative and Executive Calendar* notes that Chairman Pat McCarran reported Andrews out of committee adversely. CRS assumes that the final committee vote was for a motion to report unfavorably. For information concerning the committee vote, see “4 Truman Choices Rejected Sharply In Senate Rebuffs,” *The New York Times*, Aug. 10, 1950, p. 1.
- k. Ibid.
- l. “Senate Unit Blocks Truman on Judgeships,” *Washington Post*, Sept. 18, 1951, p. 12.
- m. The *Legislative and Executive Calendar* notes that on Sept. 17, 1951, motions to report favorably for the Drucker and Harrington nominations were defeated and that motions to report unfavorably were also defeated; however, on Oct. 8, 1951, the calendar notes that the committee disapproved the nominations of Harrington and Drucker but then reported both nominations out on the same day. The Oct. 8 vote, although not stated in the calendar, tends to suggest that the committee considered a second motion to report unfavorably. See *Legislative and Executive Calendar*, Committee on the Judiciary, 82nd Cong., 1st sess., p. 553. News accounts suggest that the Senate rejected the nominations of Drucker and Harrington to prevent President Truman from granting them recess appointments. See “Two Truman Choices Are Rejected: Senate Supports Douglas in Dispute Over Judgeships,” *Washington Post*, Oct. 10, 1951, p. 10.
- n. *Legislative and Executive Calendar*, Committee on the Judiciary, 94th Cong., 2nd sess., p. 247. *Congressional Quarterly*, *Inside Congress*, “‘Senatorial Courtesy’ Derails Ford Judgeship Nomination,” *Congressional Quarterly*, May 8, 1976, p. 1124.
- o. *Legislative and Executive Calendar*, Committee on the Judiciary, 95th Cong., 2nd sess., p. 212.
- p. *Legislative and Executive Calendar*, Committee on the Judiciary, 96th Cong., 1st sess., p. 206.
- q. “Heflin Votes Crucial in Defeat of Denton-Backed Judicial Nomination,” *The Associated Press*, June 6, 1986.
- r. Sean Scully, “Senate Rejects Clinton Bench Nominee; Black Missouri Judge Had Opposed Death Penalty; Democrats Charge Racism,” *The Washington Times*, Oct. 6, 1999, p. A6.
- s. *Congressional Record*, daily edition, vol. 149, May 1, 2003, p. D436.