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U.S. Circuit and District Court Nominees Confirmed During the First Year of the Biden Presidency: Overview and Analysis

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U.S. Circuit and District Court Nominees Confirmed During the First Year of the Biden Presidency: Overview and Analysis

This report provides statistics related to the nomination and confirmation of U.S. circuit and district court nominees during the first year of the Biden presidency. This report also compares these statistics from President Joe Biden's first calendar year in office with statistics from each of the first calendar years of the presidencies of his three immediate predecessors—Presidents Donald Trump, Barack Obama, and George W. Bush.

For the purposes of this report, a President's first year in office is measured as the period from the first date a President takes the oath of office (i.e., Inauguration Day) to December 31 of his first calendar year in office. So, for example, President Biden's first year in office is represented by the period from January 20, 2021, to December 31, 2021.

During his first year in office, President Biden nominated 16 individuals to U.S. circuit court judgeships, of whom 11 (69%) were also confirmed during the first year of his presidency.

Some of the report's findings regarding the 11 circuit court nominees confirmed during the first year of the Biden presidency include the following:

- The length of time from nomination to confirmation ranged from 56 days (1.8 months) to 159 days (5.2 months). A majority of nominees, 7, were confirmed within 111 days (3.6 months) of being nominated.
- Each of the circuit court nominees confirmed during President Biden's first year in office were confirmed by roll call vote (i.e., none by unanimous consent or voice vote). All received more than 30 nay votes when confirmed (with 10, or 91%, receiving more than 40 nay votes).
- Nine confirmed nominees (or 82%) were women and 2 (18%) were men. This represents the first instance during the first year of any presidency that a majority of confirmed circuit court nominees were women. Overall, of the 176 active U.S. circuit court judges serving on January 1, 2022, 65 (37%) were women and 111 (63%) were men.
- Three confirmed nominees (or 27%) were White and 8 (73%) were non-White—including 4 African American nominees, 2 Asian American nominees, and 2 Hispanic nominees. Overall, of the 176 active U.S. circuit court judges serving on January 1, 2022, 130 (74%) were White and 46 (26%) were non-White.
- Nine confirmed nominees (or 82%) received a rating of "well qualified" from the American Bar Association, while 2 (18%) received a rating of "qualified." No nominee received a rating of "not qualified."
- Eight confirmed nominees (or 73%) replaced judges who were appointed by Democratic Presidents and 3 (27%) replaced judges who were appointed by Republican Presidents.

During his first year in office, President Biden nominated 55 individuals to U.S. district court judgeships, of whom 29 (53%) were also confirmed during the first year of his presidency. The number of district court nominees confirmed during President Biden's first year in office represents the greatest number of such nominees confirmed during the first year of any presidency since the first year of the Reagan presidency (when 32 district court nominees were confirmed).

Some of the report's findings regarding the 29 district court nominees confirmed during the first year of the Biden presidency include the following:

- The length of time from nomination to confirmation ranged from 50 days (1.6 months) to 175 days (5.8 months). A majority of nominees, 15, were confirmed within 106 days (3.5 months) of being nominated.
- Each of the district court nominees confirmed during President Biden's first year in office was confirmed by roll call vote (i.e., none by unanimous consent or voice vote). Of the 29 confirmed nominees, 28 (97%)

received more than 20 nay votes when confirmed—with 16 (57%) of the 28 receiving more than 40 nay votes.

- Twenty-three confirmed nominees (or 79%) were women and 6 (21%) were men. Overall, of the 611 active district court judges serving on January 1, 2022, 214 (35%) were women and 397 (65%) were men.
- Ten confirmed nominees (or 34%) were White and 19 (66%) were non-White—including 5 African American nominees, 5 Asian American nominees, 3 Hispanic nominees, 1 American Indian nominee, and 5 biracial nominees. Overall, of the 611 active district court judges serving on January 1, 2022, 434 (71%) were White and 177 (29%) were non-White.
- Twenty-eight confirmed nominees (or 97%) received a rating of “well qualified” from the American Bar Association, while 1 (3%) received a rating of “qualified.” No nominee received a rating of “not qualified.”
- Twelve confirmed nominees (or 41%) replaced judges who were appointed by Democratic Presidents and 17 (59%) replaced judges who were appointed by Republican Presidents.

Contents

Introduction	1
U.S. Circuit Courts	1
U.S. District Courts	2
U.S. Circuit Court Nominees.....	2
Appointment Opportunities.....	2
Number and Percentage of Nominees Confirmed.....	3
Length of Time from Nomination to Confirmation.....	4
Number of Nay Votes Received When Confirmed	5
Demographic Characteristics	6
Gender.....	6
Race	7
Ratings by the American Bar Association (ABA).....	8
Party of President Who Appointed Previous Judge.....	9
U.S. District Court Nominations	10
Appointment Opportunities.....	10
Number and Percentage of Nominees Confirmed.....	11
Length of Time from Nomination to Confirmation.....	12
Number of Nay Votes Received When Confirmed	13
Demographic Characteristics	14
Gender.....	14
Race	15
Ratings by the American Bar Association (ABA).....	15
Party of President Who Appointed Previous Judge.....	16

Figures

Figure 1. U.S. Circuit Court Nominees Confirmed During the First Year of a Presidency: Number of Days from Nomination to Confirmation	5
Figure 2. U.S. Circuit Court Nominees Confirmed During the First Year of a Presidency: Number of Nay Votes Received When Confirmed.....	6
Figure 3. U.S. Circuit Court Nominees Confirmed During the First Year of a Presidency: Demographic Characteristics	7
Figure 4. U.S. Circuit Court Nominees Confirmed During the First Year of a Presidency: Party of President Who Appointed the Judge Replaced by the Confirmed Nominee	9
Figure 5. U.S. District Court Nominees Confirmed During the First Year of a Presidency: Number of Days from Nomination to Confirmation	12
Figure 6. U.S. District Court Nominees Confirmed During the First Year of a Presidency: Number of Nay Votes Received When Confirmed.....	13
Figure 7. U.S. District Court Nominees Confirmed During the First Year of a Presidency: Demographic Characteristics	14
Figure 8. U.S. District Court Nominees Confirmed During the First Year of a Presidency: Party of President Who Appointed the Judge Replaced by the Confirmed Nominee	17

Tables

Table 1. U.S. Circuit Court Nominees Who Were Nominated During a President’s First Year in Office: Number and Percentage Confirmed During the First Year, After the First Year, or Never Confirmed	3
Table 2. U.S. Circuit Court Nominees Confirmed During the First Year of a Presidency: Ratings by the American Bar Association (ABA).....	9
Table 3. U.S. District Court Nominees Who Were Nominated During a President’s First Year in Office: Number and Percentage Confirmed During the First Year, After the First Year, or Never Confirmed	11
Table 4. U.S. District Court Nominees Confirmed During the First Year of a Presidency: Ratings by the American Bar Association (ABA).....	16

Contacts

Author Information.....	17
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Introduction

This report provides information and analysis on several aspects of the judicial nomination and confirmation process for U.S. circuit and district court nominees who were confirmed during President Joe Biden’s first calendar year in office. This report also compares these statistics from President Joe Biden’s first calendar year in office with statistics from each of the first calendar years of the presidencies of his three immediate predecessors—Presidents Donald Trump, Barack Obama, and George W. Bush.¹ Under Article III, Section I of the Constitution, U.S. circuit and district court nominees confirmed by the Senate hold office “during good Behaviour,” which can mean life tenure.²

For the purposes of this report, a President’s first year in office is measured as the period from the first date a President takes the oath of office (i.e., Inauguration Day) to December 31 of his first calendar year in office. So, for example, President Biden’s first year in office is represented by the period from January 20, 2021, to December 31, 2021.³

U.S. Circuit Courts

The U.S. courts of appeals, or circuit courts, take appeals from federal lower court decisions and are also empowered to review the decisions of many administrative agencies. The United States is divided into 12 regional or geographic circuits, each with a U.S. court of appeals. One additional nationwide circuit, the U.S. Court of Appeals for the Federal Circuit, has specialized subject matter jurisdiction.⁴ Cases presented to the U.S. courts of appeals are generally considered by judges sitting in three-member panels. The courts of appeals provide final decisions each year in thousands of cases.⁵

Altogether, 179 judgeships for the 13 courts of appeals are currently authorized by law (167 judgeships for the 12 regional circuit courts and 12 for the U.S. Court of Appeals for the Federal Circuit). The First Circuit (comprised of Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico) has the fewest number of authorized circuit court judgeships, 6, while the Ninth Circuit (comprised of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington) has the most, 29.⁶

¹ Nominees confirmed to other federal courts—including the Supreme Court, the U.S. Court of International Trade, the U.S. Court of Federal Claims, and territorial district courts (e.g., the District Court of Guam)—during the first year of a presidency are outside the scope of this report. Nominees confirmed to the Court of Federal Claims and territorial courts are confirmed under Article IV of the Constitution.

² Pursuant to this constitutional language, Article III judges may hold office for as long as they live or until they voluntarily leave office. A President has no power to remove them from office. Article III judges may be removed by Congress through the process of impeachment by the House and conviction by the Senate.

³ Similarly, the first year of the Trump presidency is represented by the period from January 20, 2017, to December 31, 2017; the first year of the Obama presidency is represented by the period from January 20, 2009, to December 31, 2009; and the first year of the George W. Bush presidency is represented by the period from January 20, 2001, to December 31, 2001.

⁴ The Federal Circuit (which was created in its modern form by the Federal Courts Improvement Act of 1982, P.L. 97-164, 96 Stat. 25), has nationwide jurisdiction and hears certain specialized legal claims related to international trade, government contracts, patents, trademarks, certain money claims against the U.S. government, federal personnel, veterans’ benefits, and public safety officers’ benefits claims.

⁵ The Administrative Office of U.S. Courts, “About the U.S. Courts of Appeals,” online at <https://www.uscourts.gov/about-federal-courts/court-role-and-structure/about-us-courts-appeals>.

⁶ The relative number of different judgeships authorized among circuit courts generally reflects the population

U.S. District Courts

U.S. district courts are the federal trial courts of general jurisdiction. These courts resolve civil disputes⁷ and handle criminal matters⁸ by determining facts and applying legal principles.⁹ There are 91 U.S. district courts established under Article III of the Constitution. Each state has at least one U.S. district court (as do the District of Columbia and Puerto Rico), while some states have as many as four district courts.¹⁰

Altogether, 673 U.S. district court judgeships are currently authorized by Congress under Article III.¹¹ Congress has authorized between 1 and 28 judgeships for each district court. The Eastern District of Oklahoma (Muskogee) has 1 authorized judgeship, the smallest number among district courts, whereas the Southern District of New York (Manhattan) and the Central District of California (Los Angeles) each have 28 judgeships, the most among district courts.¹²

U.S. Circuit Court Nominees

Appointment Opportunities

Opportunities for a President to make U.S. circuit and district court appointments arise when judgeships are vacant or are scheduled to become vacant. Various factors influence the number of such opportunities a President has during his first year in office, including the number of vacancies that exist when he assumes office and the frequency with which judicial departures occur after he assumes office.¹³

There was variation in the number and percentage of U.S. circuit court judgeships that were vacant on January 1 immediately prior to the beginning of each new presidency from 2001 to

differences of the geographic areas over which each circuit court exercises jurisdiction. For example, based on 2020 Census Bureau population estimates, the First Circuit has a population of approximately 13.8 million, whereas the Ninth Circuit has a population of approximately 67.1 million.

⁷ The Administrative Office of U.S. Courts, “Civil Cases,” online at <https://www.uscourts.gov/about-federal-courts/types-cases/civil-cases>.

⁸ The Administrative Office of U.S. Courts, “Criminal Cases,” online at <https://www.uscourts.gov/about-federal-courts/types-cases/criminal-cases>.

⁹ The Administrative Office of U.S. Courts, “Court Role and Structure,” online at <https://www.uscourts.gov/about-federal-courts/court-role-and-structure>.

¹⁰ Specifically, California, New York, and Texas each have four district courts.

¹¹ This total includes 10 temporary judgeships. See the U.S. Courts website at <http://www.uscourts.gov/JudgesAndJudgeships/AuthorizedJudgeships.aspx>.

¹² The relative number of different judgeships authorized among district courts generally reflects the population differences of the geographic areas over which each district court exercises jurisdiction. For example, based on 2020 Census Bureau population estimates, the Eastern District of Oklahoma (Muskogee) has a population of approximately 752,000, whereas the Central District of California (Los Angeles) has a population of approximately 19.4 million.

¹³ Other factors that might influence the ability of a President to appoint U.S. circuit court judges during his first year in office include whether Congress has authorized new circuit court judgeships during the first year of a presidency (thereby creating additional vacant judgeships); the blue slip policy used by the Senate Judiciary Committee to process nominations (i.e., does a President’s nominee need two positive blue slips in order for the nomination to advance through the process?); and the willingness of the majority party in the Senate to consider certain nominations submitted by a President (which might be an issue under divided party control, i.e., the President’s political party is different than the chamber’s majority party).

2021.¹⁴ On January 1, 2021 (prior to President Biden assuming office on January 20, 2021), 2 (1%) of 179 U.S. circuit court judgeships were vacant.¹⁵

On January 1, 2017 (prior to President Trump assuming office on January 20, 2017), 17 (9%) of 179 U.S. circuit court judgeships were vacant.

On January 1, 2009 (prior to President Obama assuming office on January 20, 2009), 13 (7%) of 179 U.S. circuit court judgeships were vacant.

On January 1, 2001 (prior to President Bush assuming office on January 20, 2001), 26 (15%) of 179 U.S. circuit court judgeships were vacant.

Number and Percentage of Nominees Confirmed

As shown by **Table 1**, during the first year of his presidency, President Biden nominated 16 individuals to be U.S. circuit court judges. Of the four presidencies included in the table, President Obama nominated the fewest number of individuals to circuit court judgeships during his first year in office (12), while President Bush nominated the greatest number (29).

Of the four presidencies included in the table, President Biden had the second-greatest number of circuit court nominees confirmed during the first year of a presidency (11).¹⁶ President Obama had the fewest number of circuit court nominees confirmed during the first year (3), whereas President Trump had the greatest number confirmed (12).

Of the four presidencies included in the table, President Biden had the greatest percentage of circuit court nominees who were nominated during the first year of a presidency also confirmed during the first year (69%). In contrast, President Bush had the smallest percentage of such nominees confirmed (21%).

Table 1. U.S. Circuit Court Nominees Who Were Nominated During a President's First Year in Office: Number and Percentage Confirmed During the First Year, After the First Year, or Never Confirmed

(2001-2021)

President	First Year in Office	Number of Nominees (First Year in Office)	U.S. Circuit Court Nominees During First Year in Office		
			Confirmed During First Year in Office	Confirmed After First Year in Office ^a	Never Confirmed ^b
Biden	2021	16	11 (69%)	TBD	TBD
Trump	2017	19	12 (63%)	6 (32%)	1 (5%)

¹⁴ The Administrative Office of the U.S. Courts reports the number of U.S. circuit and district court vacancies that existed on the 1st of each month (and not on the 20th of each month).

¹⁵ The percentage of U.S. circuit court judgeships that were vacant is calculated by dividing the number of circuit court vacancies that existed on a particular date by the number of circuit court judgeships that were authorized on that same date.

¹⁶ As reported previously by CRS, this is also the second-highest number of circuit court nominees confirmed during the first year of a presidency since 1953 (there were also 11 circuit court nominees confirmed during the first years of the Kennedy and Nixon presidencies). Additionally, the 11 circuit court nominees confirmed during the first year of the Biden presidency is above the median number of such nominees confirmed during the first year of presidencies since 1953 (with a median of 8 confirmed nominees). See CRS Insight IN11836, *U.S. Circuit Court Nominees Confirmed During the First Year of the Biden Presidency: Overview and Comparative Analysis*, by Barry J. McMillion.

		U.S. Circuit Court Nominees During First Year in Office			
Obama	2009	12	3 (25%)	9 (75%)	0 (0%)
Bush	2001	29	6 (21%)	17 (59%)	6 (21%)

Source: Congressional Research Service.

Notes: The percentages reported in each row may not add to 100 because of rounding. For the purposes of this report, “TBD” is an abbreviation for “to be determined.”

- a. These individuals were nominated to U.S. circuit court judgeships during the first year of a presidency and were ultimately confirmed at some point after a President’s first year in office (some individuals may have been nominated multiple times prior to confirmation).
- b. These individuals were nominated to U.S. circuit court judgeships during the first year of a presidency and the nominations were never confirmed by the Senate.

Overall, of the three completed presidencies included in the table, President Bush had the greatest number of individuals who were nominated to circuit court judgeships during the first year of his presidency ultimately confirmed by the Senate (23). President Obama had the fewest number of such nominees (12).

In terms of the percentage of first-year circuit court nominees ultimately confirmed by the Senate, President Obama had the greatest percentage ultimately confirmed (12 of 12 nominees, or 100%) and President Bush had the smallest percentage confirmed (23 of 29 nominees, or 79%).

Length of Time from Nomination to Confirmation

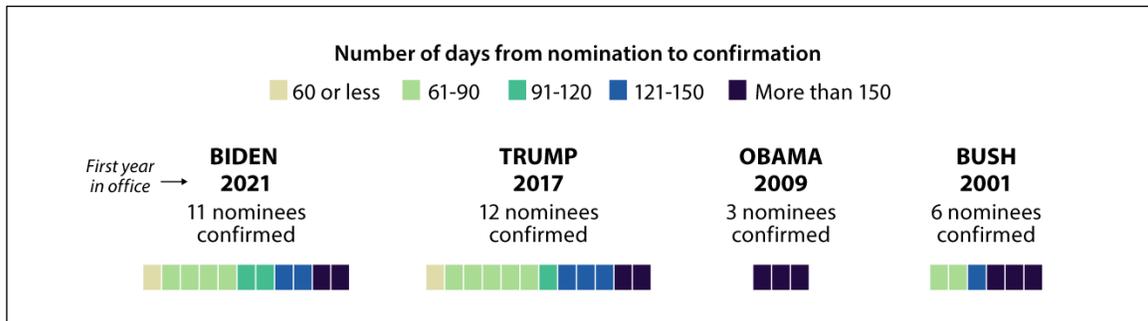
Figure 1 provides information related to the length of time from nomination to confirmation for U.S. circuit court nominees who were confirmed during the first year of each presidency from 2001 to 2021. The figure shows the number of circuit court nominees who were confirmed within 60 days or fewer of being nominated; within 61 to 90 days of being nominated; within 91 to 120 days of being nominated; within 121 to 150 days of being nominated; and 151 or more days after being nominated.

A plurality (4 of 11, or 36%) of President Biden’s circuit court nominees who were confirmed during his first year in office were confirmed within 61 to 90 days of being nominated (i.e., within 3 months of being nominated). One nominee was confirmed within 60 days or fewer of being nominated; 2 nominees were confirmed within 91 to 120 days; 2 nominees were confirmed within 121 to 150 days; and 2 nominees were confirmed 151 or more days after being nominated.

Of the 11 circuit court nominees confirmed during the first year of the Biden presidency, the shortest length of time a nominee waited to be confirmed after being nominated was 56 days (1.8 months), whereas the greatest length of time was 159 days (5.2 months).

Similarly, a plurality (5 of 12, or 42%) of President Trump’s circuit court nominees confirmed during his first year in office were also confirmed within 61 to 90 days of being nominated. One nominee was confirmed within 60 days or fewer of being nominated; 1 nominee was confirmed within 91 to 120 days; 3 nominees were confirmed within 121 to 150 days; and 2 nominees were confirmed 151 or more days after being nominated.

Figure 1. U.S. Circuit Court Nominees Confirmed During the First Year of a Presidency: Number of Days from Nomination to Confirmation (2001-2021)



Source: Congressional Research Service.

Of the 12 circuit court nominees confirmed during the first year of the Trump presidency, the shortest length of time a nominee waited to be confirmed after being nominated was 59 days (1.9 months), whereas the greatest length of time was 177 days (5.8 months).

Each of the 3 circuit court nominees confirmed during President Obama’s first year in office were confirmed 151 or more days after being nominated. The shortest length of time from nomination to confirmation for these 3 nominees was 168 days (5.5 months), whereas the greatest length of time was 247 days (8.1 months).

Three (50%) of the 6 circuit court nominees confirmed during President Bush’s first year in office were confirmed 151 or more days after being nominated. Two nominees were confirmed within 61 to 90 days of being nominated and 1 nominee was confirmed within 121 to 150 days.

Of the 6 circuit court nominees confirmed during the first year of the Bush presidency, the shortest length of time a nominee waited to be confirmed after being nominated was 71 days (2.3 months), whereas the greatest length of time was 188 days (6.2 months).

The relatively greater speed by which the Senate confirmed circuit court nominees during each of the first years of the Biden and Trump presidencies is likely attributable, in part, to the reinterpretation of Senate Rule XXII during the 113th Congress (2013-2014) to allow cloture to be invoked on most nominations by a simple majority of Senators voting (a quorum being present).¹⁷

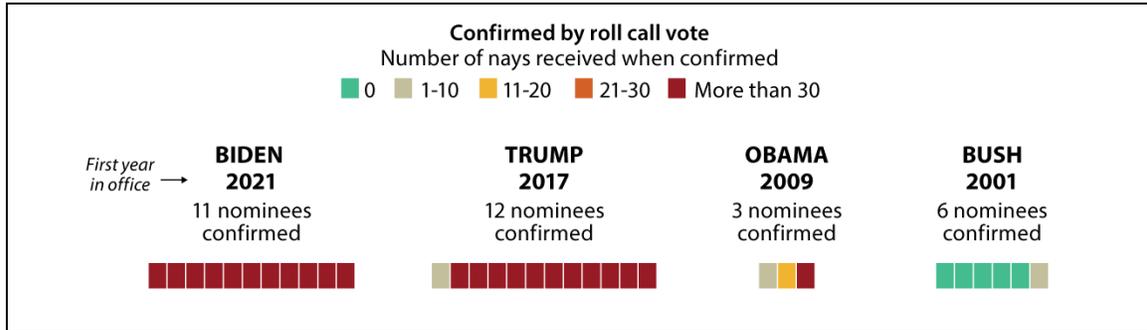
Number of Nay Votes Received When Confirmed

For U.S. circuit court nominees who were confirmed during the first year of each presidency from 2001 to 2021, **Figure 2** shows the range of nay votes a nominee received when confirmed by the Senate. Each circuit court nominee confirmed during the first year of a presidency from 2001 to

¹⁷ For additional information regarding the reinterpretation of Senate Rule XXII during the 113th Congress, see CRS Report R43331, *Majority Cloture for Nominations: Implications and the “Nuclear” Proceedings of November 21, 2013*, by Valerie Heitsch. The change surrounding the Senate Judiciary Committee’s blue slip policy in 2017, during the first year of the Trump presidency, may not have been a factor in the relatively shorter time it took the Senate to confirm circuit court nominees in 2017 or during the first year of the Biden presidency. Each of the circuit court nominees confirmed in 2017 and 2021 reportedly had the support of both of his or her home state Senators (i.e., the nominee received two positive slips). Nonetheless, the change in the committee’s blue slip policy for circuit court nominees may have had an impact on the time from nomination to confirmation for circuit nominees during other years of the Trump presidency (and could have an impact during other years of the Biden presidency).

2021 was confirmed by roll call vote (i.e., none were confirmed by voice vote or unanimous consent).

Figure 2. U.S. Circuit Court Nominees Confirmed During the First Year of a Presidency: Number of Nay Votes Received When Confirmed (2001-2021)



Source: Congressional Research Service.

Of the 11 circuit court nominees confirmed during the first year of the Biden presidency, each received over 30 nay votes when his or her nomination was confirmed by the Senate.

Of the 12 circuit court nominees confirmed during the first year of the Trump presidency, 11 received over 30 nay votes when confirmed (while 1 nominee received a single nay vote).

Of the 3 circuit court nominees confirmed during the first year of the Obama presidency, 1 received 3 nay votes, 1 received 16 nay votes, and another received 39 nay votes.

Of the 6 circuit court nominees confirmed during the first year of the Bush presidency, 5 received no nay votes (while 1 nominee received a single nay vote).

Demographic Characteristics

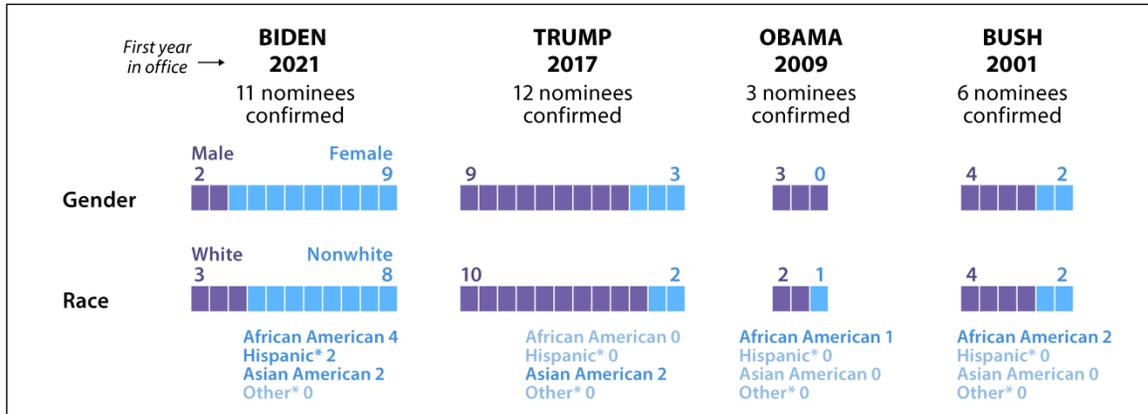
Gender

Figure 3 shows the breakdown by gender for U.S. circuit court nominees who were confirmed during the first year of each presidency from 2001 to 2021. Of the 11 U.S. circuit court nominees confirmed during the first year of the Biden presidency, 9 (82%) were women. This represents the first instance during the first year of any presidency that a majority of confirmed circuit court nominees were women.¹⁸

Of the 12 circuit court nominees confirmed during the first year of the Trump presidency, 3 (25%) were women; of the 3 circuit court nominees confirmed during the first year of the Obama presidency, none were women; and of the 6 circuit court nominees confirmed during the first year of the Bush presidency, 2 (33%) were women.

¹⁸ Note that 2021 was not the first calendar year when at least 50% of U.S. circuit court nominees confirmed by the Senate were women. There have been three other such years: 2008 (2 of 4 nominees), 2014 (8 of 12 nominees), and 2015 (the sole nominee confirmed was a woman).

Figure 3. U.S. Circuit Court Nominees Confirmed During the First Year of a Presidency: Demographic Characteristics
(2001-2021)



Source: Congressional Research Service.

Notes: For the purpose of this report, the Hispanic category is treated as a non-White category. Note, though, that individuals who identify as Hispanic may be of any race. The “Other” category includes individuals who identify as another race or as biracial.

The percentage of circuit court nominees confirmed during the first year of a presidency who were women does not always reflect the overall percentage of such nominees who were confirmed during an entire presidency. For example, of the 55 circuit court nominees confirmed during the entire Obama presidency, 24 (44%) were women.

Overall, of the 176 active U.S. circuit court judges serving as of January 1, 2022, 111 (63%) were men and 65 (37%) were women.

Race

Figure 3 also shows the breakdown by race for U.S. circuit court nominees who were confirmed during the first year of each presidency from 2001 to 2021. Of the 11 U.S. circuit court nominees confirmed during the first year of the Biden presidency, 8 (73%) were non-White—including 4 African American nominees, 2 Hispanic nominees, and 2 Asian American nominees.¹⁹ This represents the first instance during the first year of any presidency that a majority of confirmed circuit court nominees were non-White.²⁰

Of the 12 circuit court nominees confirmed during the first year of the Trump presidency, 2 (17%) were non-White; of the 3 circuit court nominees confirmed during the first year of the Obama presidency, 1 (33%) was non-White; and of the 6 circuit court nominees confirmed during the first year of the Bush presidency, 2 (33%) were non-White.

The percentage of circuit court nominees confirmed during the first year of a presidency who were non-White does not always reflect the overall percentage of such nominees who were

¹⁹ For the purpose of this report, the Hispanic category is treated as a non-White category. Note, though, that individuals who identify as Hispanic may be of any race.

²⁰ Note that 2021 was not the first calendar year when at least 50% of U.S. circuit court nominees confirmed by the Senate were non-White. There have been five other such years: 1978 (1 of 2 nominees), 2010 (7 of 13 nominees), 2012 (3 of 5 nominees), 2015 (the sole nominee confirmed was non-White), and 2016 (the sole nominee confirmed was non-White).

confirmed during an entire presidency. For example, of the 62 circuit court nominees confirmed during the entire George W. Bush presidency, 9 (15%) were non-White.

Overall, of the 176 active U.S. circuit court judges serving as of January 1, 2022, 130 (74%) were White and 46 (26%) were non-White.

Ratings by the American Bar Association (ABA)

Since 1953, every presidential Administration, except those of George W. Bush, Donald Trump, and Joe Biden, has sought prenomination evaluations of its candidates for district and circuit court judgeships by the American Bar Association (ABA).²¹ Even when a President does not seek prenomination evaluations of his nominees, the ABA evaluates the nominees after they have been nominated. The ABA committee that performs the evaluation of nominees, the Standing Committee on the Federal Judiciary, is made up of 15 lawyers with various professional experiences.²² Following a multistep evaluation process by the committee,²³ a nominee is given an official rating of “well qualified,” “qualified,” or “not qualified.”²⁴

Table 2 shows the ABA ratings received by U.S. circuit court nominees who were confirmed during the first year of presidencies from 2001 to 2021. A majority of each President’s circuit court nominees received an official rating of well qualified—ranging from four of six (67%) of President Bush’s nominees to each of the three (100%) of President Obama’s nominees.

Each of the Presidents, apart from President Obama, also had at least one nominee rated as qualified by the ABA.

President Trump was the sole President of the four who had a circuit court nominee confirmed during his first year in office who was rated as not qualified.

²¹ In 2009, the Obama Administration reinstated the White House practice, discontinued by the previous Administration of George W. Bush, of informing the ABA committee of judicial candidates under consideration and seeking the committee’s evaluation of these candidates before making nomination decisions. Bringing the ABA committee investigation back into the prenomination stage, one scholar noted, injected into that stage an “additional 30 to 45 days typically consumed” by an ABA committee investigation of a nominee. Russell Wheeler, “Judicial Nominations in the First 14 Months of the Obama and Bush Administrations,” *Governance Studies at Brookings*, April 7, 2010, at https://www.brookings.edu/wp-content/uploads/2016/06/0407_judicial_nominations_wheeler.pdf. Following the end of the Obama presidency, the Trump Administration adopted the policy of the George W. Bush Administration of not including the ABA committee investigation in the prenomination stage for judicial nominees. It was announced at the beginning of the Biden presidency that his Administration would also not include the ABA investigation in the prenomination stage. See Debra Cassens Weiss, “Like Trump, Biden asks ABA to start judicial ratings process after nominations are made,” *ABA Journal*, February 3, 2021, at <https://www.abajournal.com/news/article/like-trump-biden-asks-aba-to-start-judicial-ratings-process-after-nominations-are-made>.

²² For additional information about the committee, see the American Bar Association, *Standing Committee on the Federal Judiciary—What It Is and How It Works*, 2020, at https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/background-9-21-2020.pdf.

²³ For an in-depth discussion of this process, see CRS Report R43762, *The Appointment Process for U.S. Circuit and District Court Nominations: An Overview*, by Barry J. McMillion.

²⁴ When the committee vote is not unanimous, it is noted which rating received a majority of the committee’s votes and which rating received a minority, as well as whether the majority and minority votes were or were not “substantial.” American Bar Association, *ABA Standing Committee: What It Is and How It Works*, 2020, p. 7, at https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/background-9-21-2020.pdf. The majority vote is considered by the ABA to be the official rating of the nomination. The official rating by the ABA is the rating used to calculate the data reported in **Table 2**. The data reported in the table do not indicate whether or not that rating was unanimous.

Table 2. U.S. Circuit Court Nominees Confirmed During the First Year of a Presidency: Ratings by the American Bar Association (ABA)
(2001-2021)

President	First Year in Office	Number Confirmed	Well Qualified	ABA Rating	
				Qualified	Not Qualified
Biden	2021	11	9 (82%)	2 (18%)	0 (0%)
Trump	2017	12	10 (83%)	1 (8%)	1 (8%)
Obama	2009	3	3 (100%)	0 (0%)	0 (0%)
Bush	2001	6	4 (67%)	2 (33%)	0 (0%)

Source: Congressional Research Service.

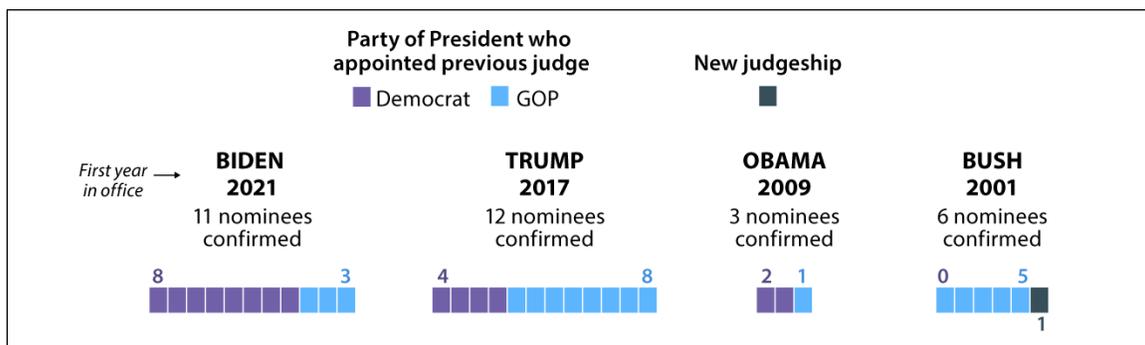
Notes: The percentages reported in each row may not add to 100 because of rounding. For some nominees, the rating received by the ABA is not unanimous. For these nominees, the rating that receives a majority vote by the ABA committee is the nominee’s official rating by the ABA. The official rating is the rating used for the statistics presented in this table.

Party of President Who Appointed Previous Judge

Figure 4 shows the breakdown in the party of the former Presidents who appointed the judges who were replaced by a particular President’s U.S. circuit court nominees confirmed during his first year in office. For each of the four presidencies included in the figure, a majority of circuit court nominees confirmed during a President’s first year in office replaced judges who were appointed by former Presidents of the same political party as the appointing President.

For example, of the 11 circuit court nominees confirmed during the first year of the Biden presidency, 8 (73%) replaced judges appointed by former Democratic Presidents and 3 (27%) replaced judges appointed by former Republican Presidents.

Figure 4. U.S. Circuit Court Nominees Confirmed During the First Year of a Presidency: Party of President Who Appointed the Judge Replaced by the Confirmed Nominee
(2001-2021)



Source: Congressional Research Service.

Of the 12 circuit court nominees confirmed during the first year of the Trump presidency, 8 (67%) replaced judges appointed by former Republican Presidents and 4 (33%) replaced judges appointed by former Democratic Presidents.

Of the 3 circuit court nominees confirmed during the first year of the Obama presidency, 2 (67%) replaced judges appointed by former Democratic Presidents and 1 (33%) replaced a judge appointed by a former Republican President.

Of the 6 circuit court nominees confirmed during the first year of the Bush presidency, 5 (83%) replaced judges appointed by former Republican Presidents and 1 was appointed to a new circuit court judgeship that was authorized in 1990.²⁵

U.S. District Court Nominations

Appointment Opportunities

As with the opportunity to appoint U.S. circuit court judges, the opportunity for a President to appoint U.S. district court judges during his first year in office is influenced by various factors—including the number of vacancies that exist when he assumes office²⁶ and the frequency with which judicial departures occur after he assumes office.²⁷

There was variation in the number and percentage of U.S. district court judgeships that were vacant on January 1 immediately prior to the beginning of each new presidency from 2001 to 2021.²⁸ On January 1, 2021 (prior to President Biden assuming office on January 20, 2021), 43 (6%) of 673 U.S. circuit court judgeships were vacant.²⁹

On January 1, 2017 (prior to President Trump assuming office on January 20, 2017), 86 (13%) of 673 U.S. district court judgeships were vacant.³⁰

On January 1, 2009 (prior to President Obama assuming office on January 20, 2009), 40 (6%) of 674 U.S. district court judgeships were vacant.³¹

On January 1, 2001 (prior to President Bush assuming office on January 20, 2001), 54 (8%) of 661 U.S. district court judgeships were vacant.

²⁵ P.L. 101-650, December 1, 1990.

²⁶ For example, the large number of district court vacancies “inherited” by President Clinton in 1993 was, in part, the result of 74 new district court judgeships created by the Federal Judgeship Act of 1990 (P.L. 101-650). Other legislation substantially increasing the number of authorized circuit and district court judgeships was enacted in 1978 (Omnibus Judgeship Act, P.L. 95-486) and in 1984 (Bankruptcy Amendments and Federal Judgeship Act, P.L. 98-353).

²⁷ As with U.S. circuit courts, there may be other factors that might influence a President’s ability to appoint U.S. district court judges during his first year in office. These factors include whether Congress has authorized new district court judgeships during the first year of a presidency (thereby creating additional vacant judgeships); the blue slip policy used by the Senate Judiciary Committee to process nominations (i.e., does a President’s nominee need two positive blue slips in order for the nomination to advance through the process?); and the willingness of the majority party in the Senate to consider certain nominations submitted by a President (which might be an issue under divided party control, i.e., the President’s political party is different than the chamber’s majority party).

²⁸ The Administrative Office of the U.S. Courts reports the number of U.S. circuit and district court vacancies that existed on the 1st of each month (and not on the 20th of each month).

²⁹ The percentage of U.S. district court judgeships that were vacant is calculated by dividing the number of district court vacancies that existed on a particular date by the number of district court judgeships that were authorized on that same date.

³⁰ In 2010, the number of authorized district court judgeships decreased from 674 to 673 when a temporary judgeship authorized for the Northern District of Ohio lapsed (i.e., expired).

³¹ The difference in the number of district court judgeships on January 1, 2009, and January 1, 2001, is due to additional district court judgeships that were authorized by P.L. 107-273, November 2, 2002.

Number and Percentage of Nominees Confirmed

As shown by **Table 3**, President Biden, during the first year of his presidency, nominated 55 individuals to be U.S. district court judges. Of the four presidencies included in the table, this was the greatest number of individuals nominated to district court judgeships during the first year of a presidency. In contrast, President Obama nominated the fewest number of individuals to district court judgeships during his first year in office (21).

Of the four presidencies included in the table, President Biden had the greatest number of district court nominees confirmed during the first year of a presidency (29), whereas President Trump had the fewest number confirmed during the first year (6).³²

Of the four presidencies included in the table, President Biden had the second-greatest percentage of district court nominees who were nominated during the first year of a presidency also confirmed during the first year (53%). President Bush had the greatest percentage of such nominees (61%), whereas President Trump had the smallest percentage (12%).

Table 3. U.S. District Court Nominees Who Were Nominated During a President's First Year in Office: Number and Percentage Confirmed During the First Year, After the First Year, or Never Confirmed
(2001-2021)

President	First Year in Office	Number of Nominees (First Year in Office)	U.S. District Court Nominees Who Were Nominated During First Year in Office		
			Confirmed During First Year in Office	Confirmed After First Year in Office ^a	Never Confirmed ^b
Biden	2021	55	29 (53%)	TBD	TBD
Trump	2017	49	6 (12%)	38 (78%)	5 (10%)
Obama	2009	21	9 (43%)	11 (52%)	1 (5%)
Bush	2001	36	22 (61%)	14 (39%)	0 (0%)

Source: Congressional Research Service.

Notes: The percentages reported in each row may not add to 100 because of rounding. For the purposes of this report, "TBD" is an abbreviation for "to be determined."

- a. These individuals were nominated to U.S. district court judgeships during the first year of a presidency and were ultimately confirmed at some point after a President's first year in office (some individuals may have been nominated multiple times prior to confirmation).
- b. These individuals were nominated to U.S. district court judgeships during the first year of a presidency and the nominations were never confirmed by the Senate.

Overall, of the three completed presidencies included in the table, President Trump had the greatest number of individuals who were nominated to district court judgeships during the first

³² As reported previously by CRS, this is the third-highest number of district court nominees confirmed during the first year of a presidency since 1953 (there were 47 district court nominees confirmed in 1961 during the first year of the Kennedy presidency and 32 district court nominees confirmed in 1981 during the first year of the Reagan presidency). Additionally, the 29 district court nominees confirmed during the first year of the Biden presidency is above the median number of such nominees confirmed during the first year of presidencies since 1953 (with a median of 21 confirmed nominees). See CRS Insight IN11835, *U.S. District Court Nominees Confirmed During the First Year of the Biden Presidency: Overview and Comparative Analysis*, by Barry J. McMillion.

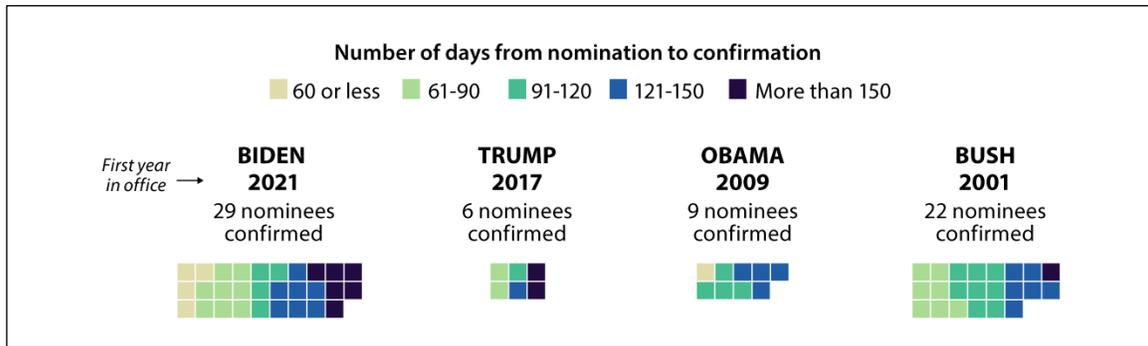
year of his presidency ultimately confirmed by the Senate (44). President Obama had the fewest number of such nominees (20).

In terms of the percentage of first-year district court nominees ultimately confirmed by the Senate, President Bush had the greatest percentage ultimately confirmed (36 of 36 nominees, or 100%) and President Trump had the smallest percentage confirmed (44 of 49 nominees, or 90%).

Length of Time from Nomination to Confirmation

Figure 5 provides information related to the length of time from nomination to confirmation for U.S. district court nominees who were confirmed during the first year of each presidency from 2001 to 2021. The figure shows the number of district court nominees who were confirmed within 60 days or fewer of being nominated; within 61 to 90 days of being nominated; within 91 to 120 days of being nominated; within 121 to 150 days of being nominated; and 151 or more days after being nominated.

Figure 5. U.S. District Court Nominees Confirmed During the First Year of a Presidency: Number of Days from Nomination to Confirmation (2001-2021)



Source: Congressional Research Service.

A plurality (8 of 29, or 28%) of President Biden’s district court nominees who were confirmed during his first year in office were confirmed within 61 to 90 days of being nominated. Four nominees were confirmed within 60 days or fewer of being nominated; 4 nominees were confirmed within 91 to 120 days; 7 nominees were confirmed within 121 to 150 days; and 6 nominees were confirmed 151 or more days after being nominated.

Of the 29 district court nominees confirmed during the first year of the Biden presidency, the shortest length of time a nominee waited to be confirmed after being nominated was 50 days (1.6 months), whereas the greatest length of time was 175 days (5.8 months).

Of the 6 district court nominees confirmed during the first year of the Trump presidency, 2 were confirmed within 61 to 90 days of being nominated; 1 was confirmed within 91 to 120 days; 1 was confirmed within 121 to 150 days; and 2 were confirmed 151 or more days after being nominated.

Of the 6 nominees, the shortest length of time a nominee waited to be confirmed after being nominated was 65 days (2.1 months), whereas the greatest length of time was 173 days (5.7 months).

Of the 9 district court nominees confirmed during the first year of the Obama presidency, 1 was confirmed within 60 days or less of being nominated; 4 were confirmed within 91 to 120 days; and 4 were confirmed within 121 to 150 days.

Of the 9 nominees, the shortest length of time a nominee waited to be confirmed after being nominated was 39 days (1.3 months), whereas the greatest length of time was 140 days (4.6 months).

Of the 22 district court nominees confirmed during the first year of the Bush presidency, a plurality (8 of 22, or 36%) were confirmed within 91 to 120 days of being nominated. Seven nominees were confirmed within 61 to 90 of being nominated; 6 nominees were confirmed within 121 to 150 days; and 1 nominee was confirmed 151 or more days after being nominated.

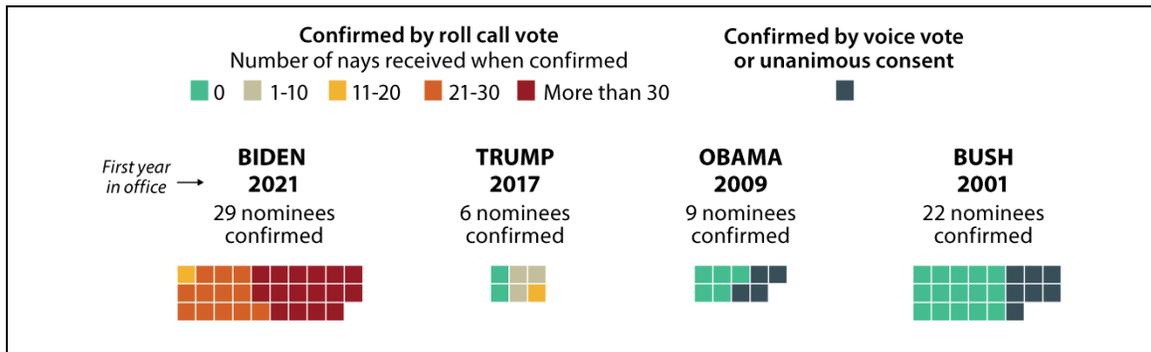
Of the 22 nominees, the shortest length of time a nominee waited to be confirmed after being nominated was 64 days (2.1 months), whereas the greatest length of time was 174 days (5.7 months).

Number of Nay Votes Received When Confirmed

For U.S. district court nominees who were confirmed by roll call vote during the first year of each presidency from 2001 to 2021, **Figure 6** shows the number or range of nay votes a nominee received when confirmed by the Senate.

Additionally, because some district court nominees were confirmed by voice vote or unanimous consent (rather than by roll call vote) during this period, the figure also shows the number of district court nominees confirmed by voice vote or unanimous consent during each presidency.

Figure 6. U.S. District Court Nominees Confirmed During the First Year of a Presidency: Number of Nay Votes Received When Confirmed (2001-2021)



Source: Congressional Research Service

Of the 29 district court nominees confirmed during the first year of the Biden presidency, a majority (16 of 29, or 55%) received more than 30 nay votes when confirmed by the Senate. Another 12 nominees, or 41%, received between 21 and 30 nay votes when confirmed. Altogether, 28 of 29 district court nominees (97%) who were confirmed during the first year of the Biden presidency received at least 21 nay votes at the time of confirmation. None during the first year were confirmed by voice vote or unanimous consent.

Of the 6 district court nominees confirmed during the first year of the Trump presidency, 2 nominees were confirmed with no nay votes; 1 nominee was confirmed with 2 nay votes; 1

nominee with 3 nay votes; 1 nominee with 10 nay votes; and 1 nominee with 16 nay votes. None during the first year were confirmed by voice vote or unanimous consent.

Of the 9 district court nominees confirmed during the first year of the Obama presidency, 5 (56%) received no nay votes. Another 4 nominees (or 44%) were confirmed by voice vote or unanimous consent.

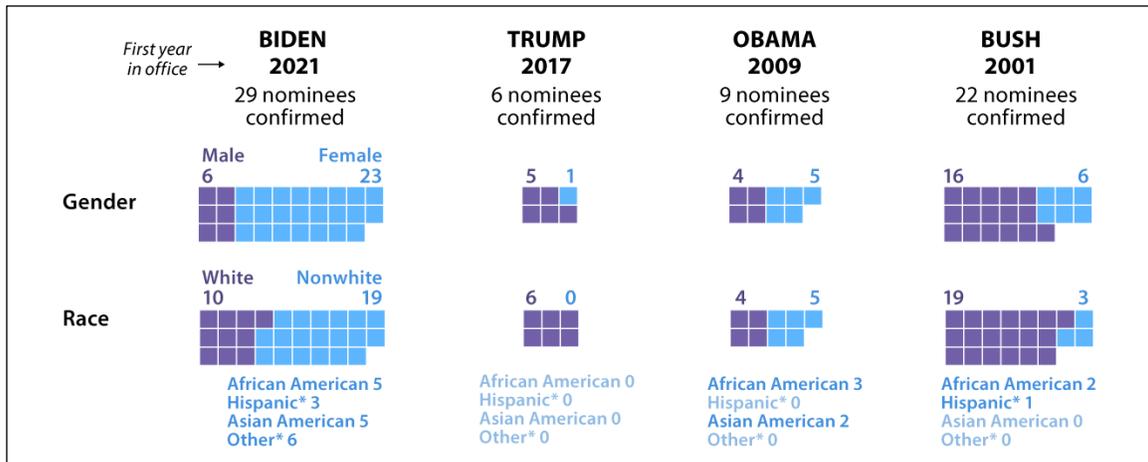
Of the 22 district court nominees confirmed during the first year of the Bush presidency, 15 (68%) received no nay votes. Another 7 nominees (or 32%) were confirmed by voice vote or unanimous consent.

Demographic Characteristics

Gender

Figure 7 shows the breakdown by gender for U.S. district court nominees who were confirmed during the first year of each presidency from 2001 to 2021. Of the 29 U.S. district court nominees confirmed during the first year of the Biden presidency, 23 (79%) were women. This represents the second instance during the first year of any presidency that a majority of confirmed district court nominees were women (with the first being in 2009, during the first year of the Obama presidency).³³

Figure 7. U.S. District Court Nominees Confirmed During the First Year of a Presidency: Demographic Characteristics (2001-2021)



Source: Congressional Research Service.

Notes: For the purpose of this report, the Hispanic category is treated as a non-White category. Note, though, that individuals who identify as Hispanic may be of any race. The “Other” category includes individuals who identify as another race or as biracial.

Of the 6 district court nominees confirmed during the first year of the Trump presidency, 1 (17%) was a woman; of the 9 district court nominees confirmed during the first year of the Obama

³³ There have been two other calendar years when at least 50% of district court nominees confirmed by the Senate were women: 2010 (19 of 35 nominees) and 2013 (17 of 32 nominees).

presidency, 5 (56%) were women; and of the 22 district court nominees confirmed during the first year of the Bush presidency, 6 (27%) were women.

The percentage of district court nominees confirmed during the first year of a presidency who were women does not always reflect the overall percentage of such nominees who were confirmed during an entire presidency. For example, of the 268 district court nominees confirmed during the entire Obama presidency, 110 (41%) were women.

Overall, of the 611 active U.S. district court judges serving as of January 1, 2022, 397 (65%) were men and 214 (35%) were women.

Race

Figure 7 also shows the breakdown by race for U.S. district court nominees who were confirmed during the first year of each presidency from 2001 to 2021. Of the 29 U.S. district court nominees confirmed during the first year of the Biden presidency, 19 (66%) were non-White (including 5 African American nominees, 5 Asian American nominees, 3 Hispanic nominees, 1 American Indian nominee, and 5 biracial nominees).³⁴ This represents the second instance during the first year of any presidency that a majority of confirmed district court nominees were non-White (with the first being in 2009 during the first year of the Obama presidency).³⁵

Of the 6 district court nominees confirmed during the first year of the Trump presidency, none were non-White; of the 9 district court nominees confirmed during the first year of the Obama presidency, 5 (56%) were non-White; and of the 22 district court nominees confirmed during the first year of the Bush presidency, 3 (14%) were non-White.

The percentage of district court nominees confirmed during the first year of a presidency who were non-White does not always reflect the overall percentage of such nominees who were confirmed during an entire presidency. For example, of the 268 district court nominees confirmed during the entire Obama presidency, 98 (37%) were non-White.

Overall, of the 611 active U.S. district court judges serving as of January 1, 2022, 434 (71%) were White and 177 (29%) were non-White.

Ratings by the American Bar Association (ABA)

Each district court nominee evaluated by the ABA receives a rating of well qualified, qualified, or not qualified. Greater in-depth information related to ratings by the American Bar Association (ABA) of a President's judicial nominees is provided in the corresponding section of the report for U.S. circuit court nominees and ABA ratings (see "Ratings by the American Bar Association (ABA)").

Table 4 shows the ABA ratings received by U.S. district court nominees who were confirmed during the first year of presidencies from 2001 to 2021. A majority of each President's district court nominees received an official rating of well qualified—ranging from 13 of 22 (59%) of President Bush's nominees to 28 of 29 (97%) of President Biden's nominees.

³⁴ For the purpose of this report, the Hispanic category is treated as a non-White category. Note, though, that individuals who identify as Hispanic may be of any race.

³⁵ There has been one other calendar year when at least 50% of district court nominees confirmed by the Senate were non-White: 2013 (16 of 32 nominees).

Each of the four Presidents also had at least one confirmed district court nominee rated as qualified by the ABA, with the greatest number and percentage of confirmed nominees rated as qualified during the first year of the Bush presidency (9 of 22 nominees, or 41%).

None of the four Presidents had a district court nominee confirmed during his first year in office who was rated as not qualified by the ABA.

Table 4. U.S. District Court Nominees Confirmed During the First Year of a Presidency: Ratings by the American Bar Association (ABA)
(2001-2021)

President	First Year in Office	Number Confirmed	Well Qualified	ABA Rating	
				Qualified	Not Qualified
Biden	2021	29	28 (97%)	1 (3%)	0 (0%)
Trump	2017	6	4 (67%)	2 (33%)	0 (0%)
Obama	2009	9	8 (89%)	1 (11%)	0 (0%)
Bush	2001	22	13 (59%)	9 (41%)	0 (0%)

Source: Congressional Research Service.

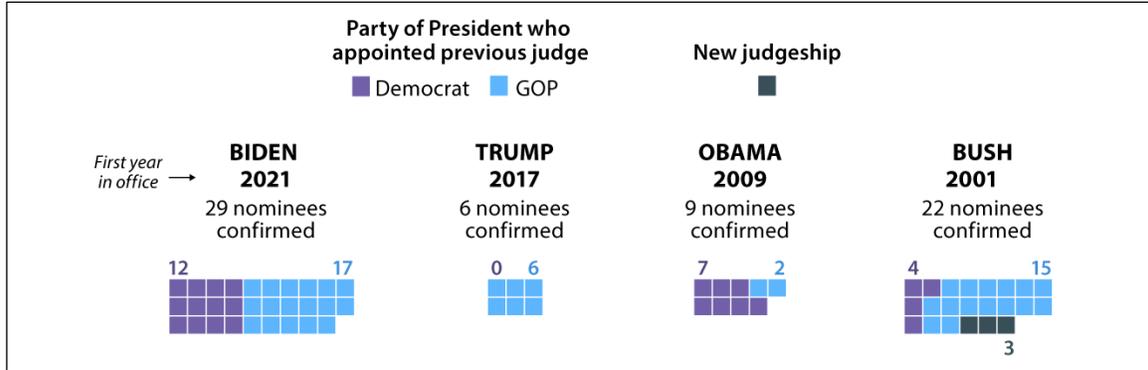
Notes: The percentages reported in each row may not add to 100 because of rounding. For some nominees, the rating received by the ABA is not unanimous. For these nominees, the rating that receives a majority vote by the ABA committee is the nominee’s official rating by the ABA. The official rating is the rating used for the statistics presented in this table.

Party of President Who Appointed Previous Judge

Figure 8 shows the breakdown in the party of the former Presidents who appointed the judges who were replaced by a particular President’s U.S. district court nominees confirmed during his first year in office. Of the four presidencies included in the figure, President Biden is the sole President for whom a majority of district court nominees during his first year in office replaced judges who were appointed by former Presidents of a different political party (i.e., the Republican Party).

Specifically, of the 29 district court nominees confirmed during the first year of the Biden presidency, 17 (59%) replaced judges appointed by former Republican Presidents and 12 (41%) replaced judges appointed by former Democratic Presidents. This is the only instance, among the presidencies included in either **Figure 4** or **Figure 8**, in which a President’s nominees who were confirmed during his first year in office replaced a greater number of judges appointed by a President belonging to the other political party.

Figure 8. U.S. District Court Nominees Confirmed During the First Year of a Presidency: Party of President Who Appointed the Judge Replaced by the Confirmed Nominee (2001-2021)



Source: Congressional Research Service.

Of the 6 district court nominees confirmed during the first year of the Trump presidency, all 6 nominees replaced judges appointed by former Republican Presidents.

Of the 9 district court nominees confirmed during the first year of the Obama presidency, 7 (78%) replaced judges appointed by former Democratic Presidents and 2 (22%) replaced judges appointed by former Republican Presidents.

Of the 22 district court nominees confirmed during the first year of the Bush presidency, 15 (68%) replaced judges appointed by former Republican Presidents, 4 (18%) replaced judges appointed by former Democratic Presidents, and 3 were appointed to new district court judgeships that were authorized in 2000.³⁶

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³⁶ P.L. 106-553, December 21, 2000.

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