

Nominations to the Supreme Court During Years of Divided and Unified Party Government

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This CRS Insight provides data and analysis related to nominations made to the Supreme Court during years of unified and divided party government. Specifically, for the purposes of this Insight, "unified party government" is defined as when the party of the President is the same as the majority party in the Senate. Conversely, "divided party government" is defined as when the party of the President is different than the majority party in the Senate. Given that the House of Representatives does not have a formal constitutional role in the selection and confirmation process for Supreme Court Justices, it is not included in the analysis below.

In general, divided party government has been relatively more common during the post-War period (i.e., since 1946) than it was during the earlier half of the twentieth century. Consequently, the period from 1946 to the present is the focus of this particular Insight. From 1900 to 1945, there were two years (1919 and 1920) in which the party of the President was different than the majority party in the Senate (compared to nearly 32 such years from 1946 to the present). Of the nearly 32 years of divided party control since 1946, 22 years were with a Republican President and Democratic majority in the Senate.

This Insight is not intended to provide a comprehensive analysis of the Supreme Court nomination and confirmation process. For longer analyses on the Supreme Court selection and confirmation process, see [CRS Report R44235](#) (addressing the selection of nominees 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). Also available is [CRS Insight IN10455](#) (providing data and analysis related to Supreme Court nominations made during presidential election years). Note also that this Insight does not take a position as to when the Senate should confirm a nominee to the Scalia vacancy.

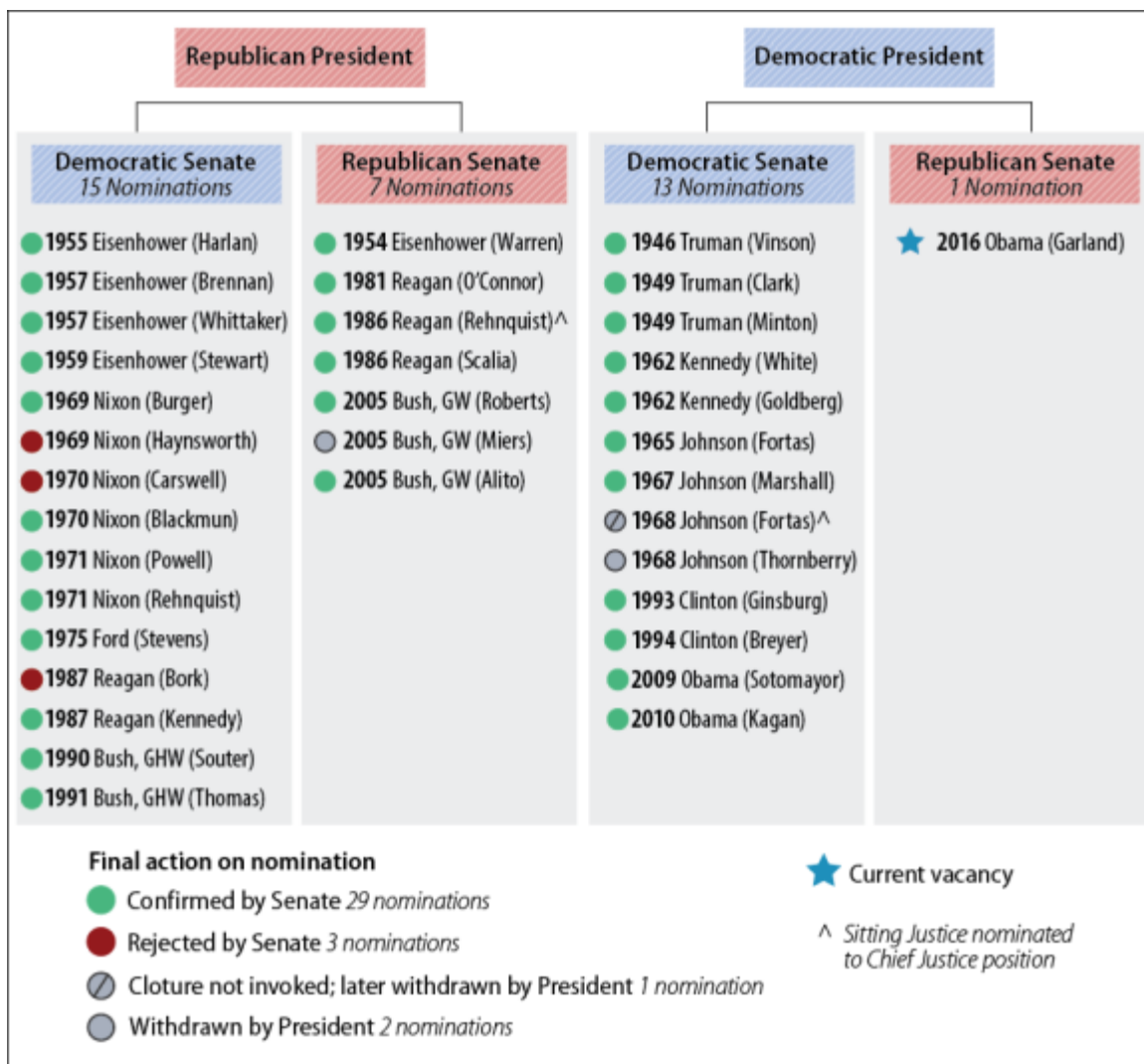
Historical Context for the Nomination to Fill the Scalia Vacancy

On March 16, 2016, President Obama nominated Merrick B. Garland to the vacancy created by the death of Antonin Scalia on February 13, 2016. As shown by **Figure 1**, the Garland nomination is unique, at least among nominations to the Supreme Court since 1946, in that it is the only nomination made by a Democratic President with a Republican majority in the Senate.

The last time this particular political configuration (a Democratic President and Republican Senate) existed at the time a nomination was made to the Court was in 1895. President Grover Cleveland, a Democrat, nominated [Rufus Peckham](#) to fill the vacancy of [Howell Jackson](#) (an appointee of President Benjamin Harrison, a Republican). At the time of the Peckham nomination during the 53rd Congress, Republicans held a majority in the Senate. The nomination was approved by voice vote on December 9, 1895.

Figure 1. Nominations to the Supreme Court during Years of Divided and Unified Party Control

(1946—Present)



Source: Congressional Research Service

Notes: The last name in parentheses is the last name of the individual nominated by a President. On March 16, 2016, President Obama nominated Merrick B. Garland to the vacancy created by the death of Antonin Scalia on February 13, 2016. Prior to 2016, the last time a Democratic President submitted a nomination to the Court while Republicans were the majority party in the Senate was in 1895. President Grover Cleveland nominated Rufus Peckham, who was confirmed by the Senate by voice vote on December 9, 1895.

Nominations Made During Years of Unified or Divided Party Control

Since 1946, most nominations to the Court have been submitted during years in which the party of the President was the same as the majority party in the Senate. Overall, 20 (56%) of the 36 nominations were made during years of unified party control, whether Republican or Democratic. The remaining 16 nominations (or 44%) were made during years of divided party control (with the party of the President being different than the majority party in the Senate).

Nominations Made During Years with Specific Configurations of Unified or Divided Party Control

Since 1946 there has been variation in terms of how frequently a specific political configuration has existed at the time a President submitted a Supreme Court nomination to the Senate.

Of the 36 nominations to the Court since 1946, 15, or a plurality of 42%, were made by a Republican President during years in which Democrats were the majority party in the Senate. Of the 15 nominations, 12 (80%) were confirmed and 3 (20%) were rejected in up-or-down roll call votes by the full Senate (as opposed to a vote by the Senate on whether to invoke cloture on a nomination). The nominees rejected by the Senate were [Robert Bork](#) in 1987 (rejected 42-58), [G. Harrold Carswell](#) in 1970 (rejected 45-51), and [Clement Haynsworth, Jr.](#) in 1969 (rejected 45-55).

Of the 36 nominations to the Court since 1946, 13 (36%) were made by a Democratic President during years in which Democrats were also the majority party in the Senate. Of the 13 nominations, 11 (85%) were confirmed, the Senate failed to invoke cloture on one (and it was subsequently withdrawn by the President), and one was withdrawn by the President.

President Johnson, in 1968, nominated [Abe Fortas](#) to be Chief Justice of the Supreme Court (in anticipation of the retirement of Chief Justice [Earl Warren](#)) and [Homer Thornberry](#) to be an Associate Justice (to replace Fortas, who was already serving on the Court as an Associate Justice). After the Senate [failed to invoke cloture](#) on the Fortas nomination, President Johnson withdrew the nomination. Additionally, the Thornberry nomination was withdrawn by President Johnson given that Justice Fortas was not elevated to the Chief Justice position.

Of the 36 nominations since 1946, 7 (19%) were made by a Republican President during years in which Republicans were also the majority party in the Senate. Of the 7 nominations, 6 (86%) were confirmed. The nomination by President George W. Bush of [Harriet Miers was withdrawn](#) on October 28, 2005.

Finally, of the 36 nominations included in **Figure 1**, 1 nomination (that of Merrick B. Garland) was made by a Democratic President during a year in which Republicans were also the majority party in the Senate.