



Supreme Court Vacancies That Occurred During Presidential Election Years (1789-2020)

October 1, 2020

The death of [Justice Ruth Bader Ginsburg](#) on September 18, 2020, created a vacancy on the Supreme Court during a presidential election year. This is the 14th such vacancy on the Court that has occurred during a presidential election year from 1789 to 2020 and that also occurred *prior to the election date itself*. Information and analysis related to these 14 vacancies are presented below.

The following election-year vacancies on the Supreme Court fall outside the scope of this Insight: (1) four vacancies that arose during presidential election years but occurred *after* the general election date; (2) eight vacancies that arose during the year *prior to* a presidential election year and still existed, for at least some period of time, during the election year itself; (3) two anticipated future vacancies on the Court that occurred [in 1968](#) (i.e., vacancies that did not exist when President Johnson submitted nominations to the Senate); and (4) six initial vacancies on the Court when it was first [established by Congress in 1789](#). Information about these vacancies is available from the author upon request by congressional readers.

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

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

Senate Action on Nominations for Vacancies that Occurred During Presidential Election Years

Nomination Submitted During Election Year

As shown by **Figure 1**, 12 (86%) of 14 vacancies that arose during a presidential election year prior to the election had a nomination submitted to the Senate during that same year. For these 12 vacancies, 7 (58%) had a nominee confirmed during the election year, 4 (33%) did not have a nominee confirmed during the election year, and 1 is the current Ginsburg vacancy. The most recent vacancy that arose during a presidential election year for which a nominee was not confirmed was the vacancy created by the death of [Justice Antonin Scalia](#) in 2016 (prior to this, 1852 was the most recent presidential election year during which a nomination was submitted and not confirmed by the Senate).

Of the seven vacancies that arose during presidential election years, and also had a nomination submitted and confirmed that same year, six featured unified party control (i.e., the party of the President was the same as the Senate majority party) and one featured divided party control (i.e., the party of the President was different than the Senate majority party). Of the four presidential election-year vacancies for which nominations were submitted during the election year but not confirmed, each featured divided party control.

No Nomination Submitted During Election Year

Figure 1 also shows that 2 (14%) of 14 vacancies that arose during a presidential election year did not have a nomination submitted until the following calendar year. In one case (the [Black nomination](#)), the nomination was rejected by a Senate floor vote. In another case (the [Brennan nomination](#)), the nominee was confirmed by the Senate after he received a recess appointment during the preceding presidential election year.

The Black nomination featured unified party control (a Democratic President and Democratic Senate majority) while the Brennan nomination featured divided party control (a Republican President and Democratic Senate majority).

Variation in Number of Days from Vacancy Occurring to Presidential Election Date

Figure 1 shows, for each of the 14 vacancies that arose during a presidential election year, the number of days from the vacancy occurring to the date of that year's presidential election.

For the 14 vacancies, the average number of days a vacancy arose prior to a presidential election was 175 days, or approximately 5.8 months (the median was 177 days).

For the seven vacancies that occurred during a presidential election year and for which a nominee was confirmed the same year, the average number of days from the vacancy occurring to the election date was 227 days, or approximately 7.5 months (the median was 281 days). For the four vacancies that occurred during a presidential election year and for which a nominee was not confirmed the same year, the average number of days from the vacancy occurring to the election date was 159 days, or approximately 5.2 months (the median was 150 days).

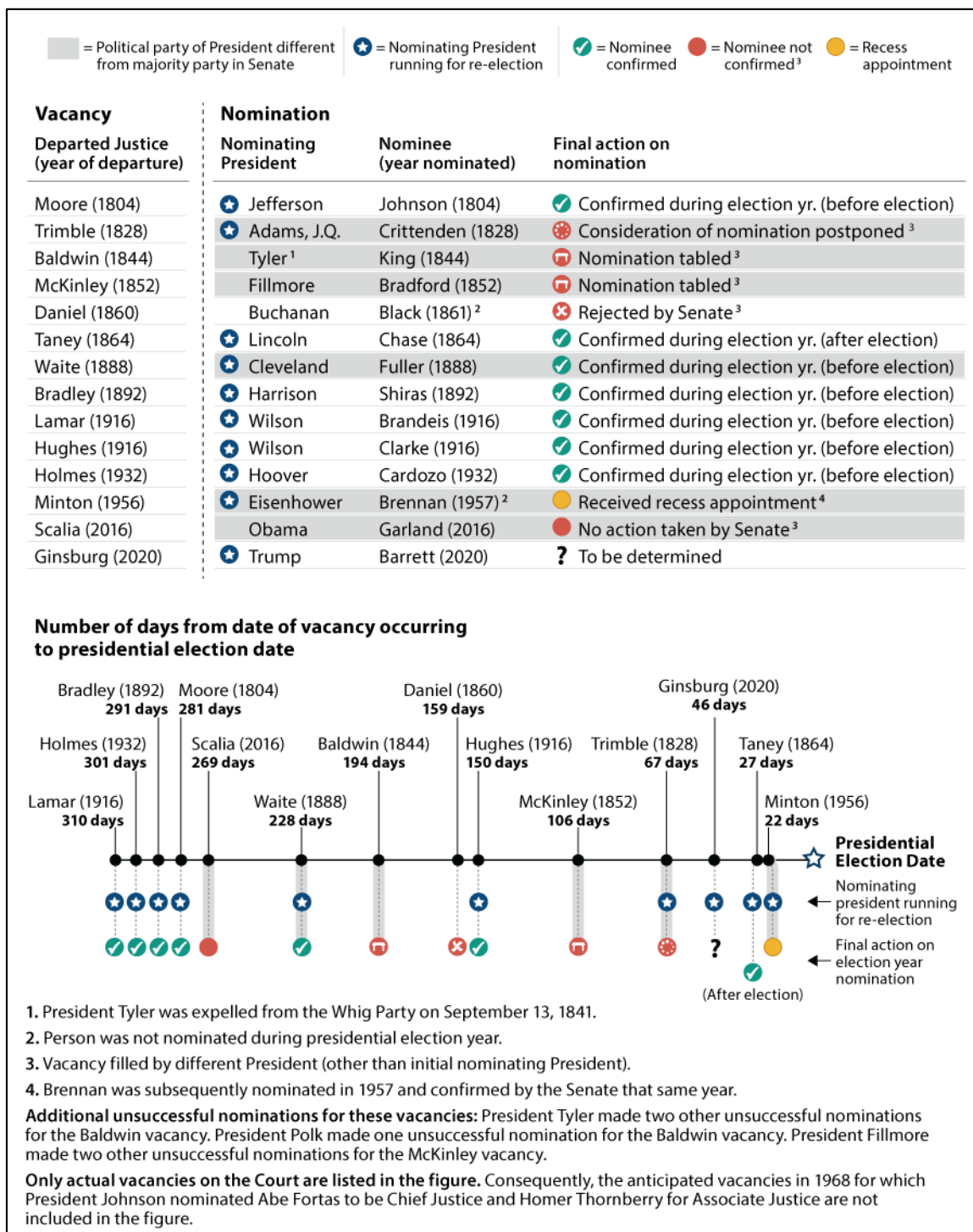
The shortest period of time from a vacancy occurring to a presidential election date occurred in 1956, when [Justice Sherman Minton](#) assumed senior status on October 15, 1956 (22 days prior to the

presidential election). [William Brennan, Jr.](#), received a recess appointment by [President Eisenhower](#) on that same date (October 15). The following year, Mr. Brennan was renominated by President Eisenhower and confirmed by the Senate.

The second-shortest period of time occurred in 1864, when [Chief Justice Roger Taney](#) died on October 12, 1864 (27 days prior to the presidential election). [Salmon Chase](#) was nominated for the Taney vacancy on December 6, 1864, 29 days after the presidential election. Mr. Chase was confirmed on the same day he was nominated.

The third-shortest period of time from a vacancy occurring to a presidential election date is the current vacancy created by the death of [Justice Ruth Bader Ginsburg](#) on September 18, 2020 (46 days prior to the presidential election on November 3, 2020).

Figure I. Supreme Court Vacancies That Occurred Prior to the Election During Presidential Election Years (1789-2020)



Source: Congressional Research Service.

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