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Presidents and Supreme Court nominees

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Presidents and Supreme Court nominees

What is the current composition of the Supreme Court? Do most presidents have the opportunity to nominate Supreme Court justices? Who has nominated the most?

Abortion, gay marriage, stem-cell research, school prayer -- there are enough contentious issues to keep any court in the headlines. The U.S. Supreme Court will certainly have its hands full during its next term. But will it be the court as it is currently composed?

One of the most important duties of the president, as set out in Article II of the U.S. Constitution, is to nominate judges to the federal bench. Congress sets the number of justices that will serve at any given time, and currently it is nine: eight associate justices plus the chief justice.

Many justices served for an extremely long time. Hugo Black was on the bench for 34 years and one month; Stephen Field, for 34 years and six months; William O. Douglas, for 36 years and six months.^[1] Yet, given the ages of several justices on the current Supreme Court, and given Chief Justice William Rehnquist's fight with cancer, it is possible that President George W. Bush will have the opportunity to nominate two or more justices during his second term. Below are (1) the current composition of the highest court in the land, (2) the nominating president, and (3) the date the judicial oath was taken^[2]:



Chief justice:

William Rehnquist was nominated by President Richard Nixon and took the judicial oath on January 7, 1972. He was elevated from associate justice to chief justice by President Reagan on September 26, 1986.

The associate justices, who by custom are seated in seniority on the Bench, are:

John Paul Stevens, nominated by President Gerald R. Ford, took the judicial oath on December 19, 1975.

Sandra Day O'Connor (President Ronald Reagan) -- September 25, 1981.

Antonin Scalia (Reagan) -- September 26, 1986.

Anthony M. Kennedy (Reagan) -- February 18, 1988.

David Souter (President George H. W. Bush) -- October 9, 1990.

Clarence Thomas (Bush) -- October 23, 1991.

Ruth Bader Ginsburg (President Bill Clinton) -- August 10, 1993.

Stephen Breyer (Clinton) -- August 3, 1994.

Note that Republican presidents have nominated seven of the nine members serving on the current Supreme Court.

Since the founding of our nation, there have been 16 chief justices. Only 14 of our 42 presidents have had the opportunity to nominate or elevate a chief justice. George Washington got to pick three; John Adams got to choose one. Since then, Republican presidents have nominated eight; Democratic presidents have nominated four.

William Howard Taft is unusual among the chief justices. After serving as president himself (1909-1913), Taft was nominated by President Warren G. Harding to be chief justice of the Supreme Court, a position he held through the 1920s.

Since 1789 there have been 97 associate justices, including those who currently serve. History has not evenly distributed their death or retirement from the bench. Just one-fifth of our presidents have nominated more than half of our associate justices. George Washington holds the record for nominating justices who would sit on the Supreme Court -- ten in all. Franklin D. Roosevelt comes in a strong second with eight justices. Jackson, Lincoln, Taft, and Eisenhower each got five of their justices on the bench. Next come Grant, Benjamin Harrison, and Grover Cleveland, with four apiece.

It is useful to recall that, although the Constitution vests the president with the power to nominate justices to the Supreme Court, he does so with the advice and consent of the Senate. Not all presidential nominees have been rubber stamped by the Senate. Robert Bork was nominated by President Reagan in the fall of 1987, only to be rejected by the Senate after particularly nasty confirmation hearings. So ugly was the confirmation process that a new verb entered the language: "to bork" (reminiscent of "to burke"), which means to assail a judicial nominee under heavy questioning that is politically motivated until the nominee voluntarily withdraws his name from consideration or is rejected by a vote on the floor of the Senate.

(Question from Pat T. of Orange County, CA)

[1] For historical information about the chief justices and associate justices of the U.S. Supreme Court, see the official site at <http://www.supremecourtus.gov/about/traditions.pdf>

[2] See <http://www.supremecourtus.gov/about/members.pdf>.