



# **U.S. Circuit and District Court Nominations: Senate Rejections and Committee Votes Other Than to Report Favorably, 1939-2009**

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## Summary

Once a nomination to a U.S. circuit court of appeals or district court 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. 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 nomination is listed on the Senate's Executive Calendar, with Senate consideration of the nomination scheduled by the majority leader. On rare occasions, the Senate, when voting on confirmation, has rejected a circuit or district court nomination. In such cases, the nomination is then returned to the President with a resolution of disapproval.

Between 1939 and the adjournment sine die of the 110<sup>th</sup> Congress on January 2, 2009, 19 U.S. circuit or district court nominations received other than a favorable vote from the Senate, the Senate Judiciary Committee, or both. Among these 19 nominations were 6 (all to the district courts) that the Senate voted to reject the nomination and 18 on which the Judiciary Committee voted other than to report favorably. This report lists the votes cast by the Judiciary Committee and the Senate on each of the 19 nominations and identifies senatorial courtesies, 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* (out of print, available from CRS upon request); CRS Report RL31868, *U.S. Circuit and District Court Nominations by President George W. Bush During the 107th-109th Congresses*; and CRS Report RL33953, *Nominations to Article III Lower Courts by President George W. Bush During the 110th Congress*.

This report will be updated as events warrant.

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## Introduction

Although judicial nominations sometimes do not receive Senate confirmation, they historically have been heavily outnumbered by judicial nominations which the Senate has confirmed. Of the 2,642 nominees to Article III circuit and district court judgeships between the start of the 79<sup>th</sup> Congress in 1945 and the close of the 110<sup>th</sup> Congress in 2009, only 255 nominees (approximately 10% of the total number of nominees in this period) failed to be confirmed by the Senate. Even smaller has been the number of lower court nominations which received unfavorable votes by the Senate Judiciary Committee or rejection votes by the full Senate. More often than not, when a circuit or district court nominee lacks key Senate support (such as the support of one or both home state Senators), the Judiciary Committee simply has declined to consider or act on the nomination. Neither the Judiciary Committee nor the full Senate is compelled to act on nominations which come before it, and nominations that receive no action are eventually returned to, or withdrawn by, the President. The vast majority of unconfirmed nominees from 1945 through 2009 – approximately 90% – failed to receive a committee vote in the Senate Judiciary Committee.<sup>1</sup>

The procedural route for a circuit or district court nomination is as follows: Once the President has submitted such a nomination to the Senate, it almost invariably is referred to the Judiciary Committee.<sup>2</sup> The committee may then hold a hearing on the nomination. After the hearing, the committee has several options: It may report the nomination to the Senate favorably, unfavorably, or without recommendation; it may vote against reporting the nomination;<sup>3</sup> or it may choose to take no action at all.<sup>4</sup> Typically, if the committee votes on a nomination, it votes to report favorably; however, in a very small number of cases, the committee has voted against reporting a nomination, or 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

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<sup>1</sup> For statistics by Congress on the number of confirmed and unconfirmed circuit court and district court nominations during the 1945-2009 time period, see CRS Report RL32122, *Judicial Nomination Statistics: U.S. District and Circuit Courts, 1945-1976*; CRS Report RL31635, *Judicial Nomination Statistics: U.S. District and Circuit Courts, 1977-2003* (out of print, available from CRS upon request); CRS Report RL31868, *U.S. Circuit and District Court Nominations by President George W. Bush During the 107th-109th Congresses*; and CRS Report RL33953, *Nominations to Article III Lower Courts by President George W. Bush During the 110th Congress*. For comparable information on judicial nominations from 1939 to 1945, consult the relevant volumes of the *Journal of the Executive Proceedings of the Senate*.

<sup>2</sup> “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*.)

<sup>3</sup> The committee does this when it fails to adopt a motion to report. The Legislative Information System (LIS) Nominations database, accessible at <http://www.congress.gov/nomis/>, has used various phrases to record the action step of the Senate Judiciary Committee in voting against reporting a judicial nomination to the Senate. See, for example, in the LIS Nominations database, the record in the 107<sup>th</sup> Congress for committee action on the circuit court nomination of Charles W. Pickering, Sr. (Nomination Number PN885), noting that the committee “Failed to adopt motions to report favorably, without recommendation, and unfavorably.” See also, the LIS record in the 102<sup>nd</sup> Congress for committee action on the circuit court nomination of Kenneth L. Ryskamp (Nomination Number PN39), noting that the committee “Failed to approve for reporting.”

<sup>4</sup> See Rybicki, *Senate Consideration of Presidential Nominations* (under heading “Reporting”).

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 lower court nomination is reported to the Senate by the Judiciary Committee, the nomination is listed on the Senate's Executive Calendar, with Senate consideration of the nomination scheduled by the majority leader.<sup>5</sup> If the Senate, when voting on whether to confirm, rejects the nomination (as has happened on rare occasions), it is returned to the President with a resolution of disapproval. If a judicial nomination does not receive a Senate vote, the nomination ultimately will either be withdrawn by the President or returned to the President by the Secretary of the Senate upon a Senate adjournment or recess of more than 30 days.<sup>6</sup>

This report identifies, from the 76<sup>th</sup> Congress (1939-1941)<sup>7</sup> through the 110<sup>th</sup> Congress (2007-2009),<sup>8</sup> 19 U.S. circuit court or district court nominations that received other than a favorable vote from the Senate, the Senate Judiciary Committee, or both. Among these 19 nominations were 6 (all to the district courts) that the Senate formally voted to reject and 18 on which the Judiciary Committee voted other than to report favorably.<sup>9</sup>

**Table 1**, below, summarizes the final committee and floor dispositions of these 19 nominations. Each row indicates a possible committee outcome (*report favorably*, *report without recommendation*, *report unfavorably*, and *fail to report*), and each column indicates a possible floor outcome (*confirmed*, *rejected*, *returned*, and *withdrawn*). Each cell provides the total number of circuit and district court nominations receiving the final committee and floor actions as indicated by the corresponding row and column. Totals for final committee and floor dispositions are found in the last column and row, respectively.

**Table 2** lists the nominations to the circuit courts of appeals (7 in all) and district courts (12 in all) 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 on which the vote occurred. Column eight provides information concerning the final disposition of the nomination in the Senate.

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<sup>5</sup> 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. Rybicki, *Senate Consideration of Presidential Nominations* (under heading "Consideration and Disposition"). Such procedural actions, however, are not considered in this report.

<sup>6</sup> 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* (under heading "Nominations Returned to the President").

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

<sup>8</sup> The 110<sup>th</sup> Congress adjourned *sine die* on January 2, 2009.

<sup>9</sup> The Judiciary Committee voted other than to report favorably on all but one of the 19 nominations listed in **Table 2** of this report. The only nomination that did not receive a vote other than to report favorably was that of Ronnie White to the District Court for the Eastern District of Missouri. The White nomination, as **Table 2** shows, was reported favorably by the Judiciary Committee, only to be rejected by the full Senate. One of the 18 on which the Committee voted other than to report favorably was subsequently (in a second vote a month later) reported favorably by the committee. See, in **Table 2**, the district court nomination of Robert F. Collins (E.LA), which the Judiciary Committee on April 14, 1978, failed to report favorably by a 5-5 tie vote, but which the committee subsequently voted 13-1 to report favorably on May 16, 1978.

## Nominations Receiving Unfavorable Senate or Committee Votes: An Empirical Summary

**Table 1** indicates that all seven circuit court nominations accounted for in the table received a committee vote other than to report favorably. Of the seven nominations, the Senate Judiciary Committee failed to adopt motions to report five, resulting in the return of four nominations to the President and the withdrawal of one. The remaining two nominations were reported without recommendation; one was confirmed<sup>10</sup> and one was returned to the President.<sup>11</sup> During the 1939-2009 period, no circuit court nominations were rejected by a vote of the Senate.

**Table 1. Number of U.S. Circuit and District Court Nominations Rejected by the Senate or Receiving Final Judiciary Committee Votes Other Than to Report Favorably**  
76<sup>th</sup> through 110<sup>th</sup> Congress (January 3, 1939 – January 2, 2009)

Final Action by Senate Judiciary Committee	Outcome of Nomination on Senate Floor							Total		
	Confirmed		Rejected		Returned		Withdrawn			
Report Favorably	1	1 district <sup>a</sup>	1	1 district	—		—		2	2 district
Report without Recommendation	2	1 circuit	—		1	1 circuit	—		3	2 circuit
		1 district	—			—	1 district			
Report Unfavorably	—		5	5 district	—		—		5	5 district
Fail to Report	—		—		5	4 circuit	4	1 circuit	9	5 circuit
	—		—			1 district		3 district <sup>b</sup>		4 district
All Committee Actions	3	1 circuit	6	—	6	5 circuit	4	1 circuit	19	7 circuit
		2 district		6 district		1 district		3 district		12 district

**Source:** CRS Judicial Nominations Database.

**Notes:** This table indicates the final committee action on each nomination in question. In most cases, the Senate Judiciary Committee considered more than one motion. For example, In the 107<sup>th</sup> Congress, the Senate Judiciary Committee considered three motions with respect to the nomination of Priscilla R. Owen: motions to report favorably, report without recommendation, and report unfavorably. In each vote, the motion lost 9-10. As a result, the committee failed to report Owen’s nomination and her nomination was returned. In this table, Owen is counted in the cell “Fail to Report/Returned” cell. Detailed information identifying each nomination can be located in **Table 2**.

- a. The nomination accounted for in this cell, that of Robert F. Collins (E. LA), although ultimately reported favorably by the Judiciary Committee, had previously failed to be reported when an earlier committee motion to report favorably lost on a tie vote.
- b. This includes the district court nomination of William B. Poff, which was tabled by the Senate Judiciary Committee in a 9-0 vote.

Additionally, **Table 1** indicates that, of the 12 district court nominations accounted for in the table, four were never reported out of the Judiciary Committee;<sup>12</sup> one of the four nominations was

<sup>10</sup> See, in **Table 2**, the nomination of Daniel A. Manion to the Seventh Circuit by President Reagan.

<sup>11</sup> See, in **Table 2**, the nomination of Susan W. Liebler to the Federal Circuit by President Reagan.

<sup>12</sup> This number includes the nomination of William B. Poff. Poff was a Ford nominee whose nomination was tabled by (continued...)

returned, and three were withdrawn by the President.<sup>13</sup> Two nominations were reported to the Senate favorably; one, who was confirmed, had initially failed in a Judiciary Committee vote to have his nomination reported (only to have the committee decide, in a later vote, to report the nomination);<sup>14</sup> the other, although reported favorably by the Judiciary Committee, was rejected by the Senate.<sup>15</sup> One nomination was reported to the Senate without recommendation; that nomination was confirmed by the Senate.<sup>16</sup> Five nominations were reported to the Senate unfavorably; all five were rejected by the Senate.<sup>17</sup>

## Chronological Discussion of Nominations Receiving Unfavorable Votes

### 1939-1951

**Table 2** reveals that, from 1939 through 1951, one circuit and six district court nominees received votes from the Senate Judiciary Committee other than to report favorably.<sup>18</sup> In all but one of these seven cases,<sup>19</sup> the committee declined to report favorably after home state Senators, in opposing the nominations, invoked “senatorial courtesy.”<sup>20</sup> 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 and rejected by the Senate within the 1939-2009 time period. The committee adversely reported Roberts in 1939 on the grounds that his nomination was “personally offensive” to the two Virginia Senators.<sup>21</sup> The Senate, in turn, rejected the Roberts

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(...continued)

the Senate Judiciary Committee.

<sup>13</sup> See, in **Table 2**, the nominations of Nathan R. Margold (DC, Truman nominee), Charles B. Winberry, Jr. (E. NC, Carter nominee), Jefferson B. Sessions (S. AL, Reagan nominee), and William B. Poff (W. VA, Ford nominee).

<sup>14</sup> See, in **Table 2**, the nomination of Robert F. Collins (E. LA, Carter nominee).

<sup>15</sup> See, in **Table 2**, the nomination of Ronnie White (E. MO, Clinton nominee).

<sup>16</sup> See, in **Table 2**, the nomination of J. Leon Holmes (E. AR, G.W. Bush nominee).

<sup>17</sup> See, in **Table 2**, the district court nominations of Floyd H. Roberts, Carroll O. Switzer, M. Neil Andrews, Cornelius J. Harrington, and Joseph Drucker.

<sup>18</sup> See, in **Table 2**, the district court nominations of Floyd H. Roberts, Nathan R. Margold, M. Neil Andrews, Carroll O. Switzer, Joseph Drucker, and Cornelius J. Harrington and the circuit court nomination of James V. Allred.

<sup>19</sup> In one case, a scholar writes that (rather than due to a Senator’s invocation of senatorial courtesy) the nomination in 1945 of Nathan R. Margold to the U.S. District Court for the District of Columbia, “went nowhere because of opposition from the Democratic National Committee.” Sheldon Goldman, *Picking Federal Judges: Lower Court Selection from Roosevelt through Reagan* (New Haven: Yale University Press, 1997), p. 56. (Hereafter cited as Goldman, *Picking Federal Judges*.) Goldman’s account of the unsuccessful Margold nomination is drawn from papers cited from the Franklin D. Roosevelt and Harry S. Truman presidential libraries. See *Ibid.*, note 74, p. 375 (reference to Roosevelt library papers), and note 40, p. 379 (reference to Truman library papers).

<sup>20</sup> 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.

<sup>21</sup> National Archives and Records Administration, Record Group 46, Records of the U.S. Senate, 76<sup>th</sup> Cong., Records of Executive Proceedings, Nomination Files, Judiciary Committee, Hearings on Nomination of Floyd H. Roberts (1939), p. 84.

nomination by a 9-72 vote. In another case, in 1943, the Judiciary Committee failed, in a 9-9 tie view, to report the Fifth Circuit Court nomination of James V. Allred, former Texas governor, after Texas's junior Senator invoked senatorial courtesy. In doing so, the Senator reportedly notified the committee that "this nomination is obnoxious to me."<sup>22</sup>

Subsequently, in 1950 and 1951, four district court nominations faced opposition from home state Senators invoking senatorial courtesy. The opposing Senators stated that that the nominations to district judgeships in their states were "personally obnoxious" due to the manner in which they were handled by the Truman Administration. The Senators, in each case, had submitted the names of their preferred judicial nominees to the Administration. The President, however, without consulting with the home state Senators, proceeded to submit the name of other nominees — not of the Senators' choosing — to the Senate for consideration.<sup>23</sup> One of the Senators, in objecting to the two judicial nominations in his state, noted it was not the nominees themselves but rather "the manner and method of their selection that made them personally obnoxious."<sup>24</sup> All four nominations were reported adversely and rejected by voice vote in the Senate.

## 1951-1977

Between 1951 and 1977, as **Table 2** shows, there were no instances in which the Senate Judiciary Committee voted against reporting a circuit or district court nomination or voted to report such a nomination without recommendation or unfavorably. In 1976, however, one nomination, that of William B. Poff, to the U.S. District Court for the Western District of Virginia, was laid on the table by a 9-0 vote of the Senate Judiciary Committee reportedly due to senatorial courtesy.<sup>25</sup>

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<sup>22</sup> "Senate Committee May Vote Today on Allred Nomination," *Washington Post*, March 22, 1943, p. 13. The Allred nomination also was opposed by Louisiana's two Democratic Senators on state representation grounds. At hearings on the nomination, Sen. John Holmes Overton of Louisiana argued that the appointment of a Texan to a judgeship on the Fifth Circuit previously occupied by a Louisianan would give Texas two seats on the circuit and Louisiana none. This, the Senator argued, was a violation of the "implied, accustomed, and essential right of the State of Louisiana to representation on the bench of the Circuit Court of Appeals of the Fifth Circuit, of which circuit Louisiana is a component part." Objections of Senator Overton in U.S. Congress, Senate Judiciary, *Nomination of James V. Allred for Judgeship of the Circuit Court of Appeals for the Fifth Circuit*, 78th Cong., 1st sess., March 2, 1943 (Washington: GPO, 1943), pp. 2-13 (specifically, p. 2 for quote). See also De Vore, "Committee's 9-to-9 Split Blocks Allred," *Washington Post*, March 23, 1943, p. 1. See also National Archives and Records Administration, Record Group 46, Records of the U.S. Senate, 78<sup>th</sup> Cong., Records of Executive Proceedings, Nomination Files, Judiciary Committee, James V. Allred, Blue Slip (1943).

<sup>23</sup> See the objections of Sen. Richard B. Russell of Georgia to the nomination of M. Neil Andrews to the Northern District of Georgia in *Congressional Record*, 81<sup>st</sup> Cong., 2<sup>nd</sup> sess., August 9, 1950, pp. 12104-12106; of Sen. Guy M. Gillette of Iowa to the nomination of Carroll V. Switzer to the Southern District of Iowa in U.S. Congress, Senate Judiciary, *Nomination Carroll O. Switzer, of Iowa, to be United States District Judge for the Southern District of Iowa*, 81<sup>st</sup> Cong., 2<sup>nd</sup> sess., April 25, 1950 (Washington: GPO, 1943), p. 15; of Sen. Paul H. Douglas of Illinois on the district court nominations of Cornelius J. Harrington and Joseph Drucker in *Congressional Record*, 82<sup>nd</sup> Cong., 1<sup>st</sup> sess., October 9, 1951, pp. 12838-12840.

<sup>24</sup> See specifically remarks made by Senator Douglas of Illinois in *Congressional Record*, 82<sup>nd</sup> Cong., 1<sup>st</sup> sess., October 9, 1951, p. 12839.

<sup>25</sup> Bob Rankin, "'Senatorial Courtesy' Derails Ford Judgeship Nomination," *Congressional Quarterly Weekly Report*, vol. 34, May 8, 1976, pp. 1123-1125. See also Goldman, *Picking Federal Judges*, p. 210.



## 1978-2009

Since 1978, six circuit and five district court nominees have received votes from the Senate Judiciary Committee other than to report favorably. Two of these nominees (one circuit and one district) were ultimately reported without recommendation and confirmed by the Senate in close rollcall votes.<sup>26</sup> One district court nominee was confirmed by a voice vote after his nomination was reported favorably out of the Senate Judiciary Committee. The successful motion to report favorably occurred after a prior motion to report the nomination favorably failed to gain committee approval.<sup>27</sup> One circuit and two district court nominations were ultimately withdrawn by the nominating President.<sup>28</sup> The four remaining circuit court nominations were returned to the President. The Senate Judiciary Committee failed to report all but one of these nominees to the full Senate.<sup>29</sup> Finally, one district court nomination, of Ronnie White to the Eastern District of Missouri, was reported favorably by the Judiciary Committee but rejected on the floor of the Senate by a 45-54 vote during the 106<sup>th</sup> Congress.

Senators' objections to these 11 nominations since 1978 rested largely on the perceived ideological orientation of judicial nominees, the professional qualifications of the nominees, or both.<sup>30</sup> For example, Daniel Manion, nominated in 1986 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,"<sup>31</sup> while his supporters "argued that opposition to his nomination was based on his conservative views and his activities with his father,"<sup>32</sup> who had co-founded the John Birch Society.

Likewise, in 2002, objections to President George W. Bush's nomination of Priscilla R. Owen to the Fifth Circuit Court of Appeals appeared primarily concerned with her ideological orientation. In Senate Judiciary Committee debate preceding a vote on her nomination, Democratic members of the committee, it was reported, characterized the nominee "as a judicial 'activist' whose opinions were colored by strong anti-abortion and pro-business views, while Republicans

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<sup>26</sup> A previous motion to report favorably on the nomination of Daniel A. Manion to the Seventh Circuit Court of Appeals (a Reagan nominee) failed to carry before the nomination was reported to the Senate without recommendation. Manion was ultimately confirmed by a 48-46 vote. The nomination of J. Leon Holmes to the Eastern District of Arkansas (a George W. Bush nominee) was reported to the Senate without recommendation. Holmes was later confirmed by a 51-46 vote.

<sup>27</sup> See, in **Table 2**, the nomination of Robert F. Collins, a Carter nominee.

<sup>28</sup> President Carter withdrew the nomination of district court nominee Charles B. Winberry, Jr. (E. NC) five months after the Senate Judiciary Committee failed to report the nomination favorably. President Reagan withdrew the nominations of circuit court nominee Bernard H. Siegan (Ninth Circuit) and district court nominee Jefferson B. Sessions (S. AL) approximately two months after motions to report favorably and report without recommendation failed.

<sup>29</sup> See, in **Table 2**, the nominations of Susan W. Liebeler (Ninth Circuit, Reagan nominee), Kenneth L. Ryskamp (Eleventh Circuit, G.H.W. Bush nominee), Charles W. Pickering, Sr. (G.W. Bush nominee), and Priscilla R. Owen (Fifth Circuit, G.W. Bush nominee). Of these nominations, only that of Susan W. Liebeler was reported out of committee. Her nomination was reported without recommendation.

<sup>30</sup> 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.

<sup>31</sup> Goldman, *Picking Federal Judges*, p. 310.

<sup>32</sup> *Ibid.*

defended her as a fair-minded jurist who was given a top rating by the American Bar Association but ran afoul of liberal interest groups.”<sup>33</sup>

Unlike the nominations considered between 1939 and 1951, which occurred during periods of unified party government,<sup>34</sup> consideration on nominations from 1976 through 2009 has occurred primarily during periods of divided government.<sup>35</sup> This was the case for 9 of 12 of the nominations receiving other than favorable votes by the Senate or the Judiciary Committee during this period. In particular, all six circuit court nominees in question were nominated by a Republican President (three by Reagan, one by George H.W. Bush, and two by George W. Bush) while Democrats held control of the Senate. Of the six district court nominations receiving other than favorable Senate or Judiciary Committee votes during this period, three (one Clinton nominee, one Reagan nominee, and one Ford nominee) received such votes during periods of divided government.

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<sup>33</sup> Helen Dewar, “Senate Panel Rejects Bush Court Nominee,” *Washington Post*, Sept. 6, 2002, pp. A1 & A8. In three successive 9-10 votes (with all Democratic members voting against the nominee, and all Republicans supporting her), the committee failed to adopt motions to report the nomination to the Senate floor. See **Table 2**. Owen, however, was renominated in the next two Congresses (the 108<sup>th</sup> and 109<sup>th</sup>), and ultimately was confirmed by the Senate on May 25, 2005.

<sup>34</sup> The term “unified party government” refers to a situation in which the presidency and both chambers of Congress are held by the same party. During the consideration of these nominations (at various times during the 1939 to 1951 period), the presidency and both chambers of Congress were controlled by Democrats.

<sup>35</sup> The term “divided government” generally refers to a situation in which one party holds the presidency and the other party holds one or both chambers of Congress. In this instance, the term refers to a specific case of divided government in which one political party has control of the presidency and the other political party has control of the Senate.

**Table 2. U.S. Circuit and District Court Nominations Receiving Rejection Votes by the Senate or Final Votes by the Senate Judiciary Committee Other Than to Report Favorably**

76<sup>th</sup> through 110<sup>th</sup> Congress (January 3, 1939 – January 2, 2009)

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

Congress	Nominee	Circuit/ District	Votes and Dates of Judiciary Committee Motions <sup>a</sup>				Outcome of Nomination
			Table	Report Favorably	Report Without Recommendation	Report Unfavorably	
96 <sup>th</sup>	Winberry, Charles B., Jr.	E.NC	—	6-8, 03/04/80 <sup>q</sup>	—	—	Withdrawn, 08/06/80
99 <sup>th</sup>	Sessions, Jefferson B.	S.AL	—	8-10, 06/05/86 <sup>r</sup>	9-9, 06/05/86 <sup>r</sup>	—	Withdrawn, 07/31/86
106 <sup>th</sup>	White, Ronnie	E.MO	—	12-6, 07/22/99 <sup>s</sup>	—	—	Rejected (45-54), 10/05/99 <sup>r</sup>
108 <sup>th</sup>	Holmes, J. Leon	E.AR	—	—	10-9, 05/01/03 <sup>t</sup>	—	Confirmed (51-46), 07/06/04

**Source:** CRS Judicial Nominations Database.

- a. Motions to gain approval in Senate committees require a majority vote in favor and thus fail if there is a tie vote.
- b. *Legislative and Executive Calendar*, Committee on the Judiciary, 78<sup>th</sup> Cong., 1<sup>st</sup> sess., p. 5.
- c. Eric Effron, "Setback for Manion," *The National Law Journal*, May 19, 1986, p. 2.
- d. Christopher Ladd and Terence Moran, "Nominees Liebler, Siegan Still Have Long Way to Go," *Legal Times*, Feb. 29, 1988, p. 4.
- e. Linda Greenhouse, "Panel Rejects Court Nominee, Ending Bitter Battle," *The New York Times*, July 15, 1988, p. A12.
- f. Neil A. Lewis, "Committee Rejects Bush Nominee to Key Appellate Court in South," *The New York Times*, Apr. 12, 1991, p. A1.
- g. Jennifer A. Dlouhy, "Democrats Defeat Pickering on Party-Line Vote," *CQ Daily Monitor*, Mar. 15, 2002, p. 1. Pickering was renominated in the 108<sup>th</sup> Congress, and received a recess appointment to the Fifth Circuit Court of Appeals on Jan. 16, 2004.
- h. Jennifer A. Dlouhy, "Republicans Vow Revenge as Owen Nomination is Defeated," *CQ Daily Monitor*, Sept. 9, 2002, p. 8. Owen was renominated in the 108<sup>th</sup> and 109<sup>th</sup> Congresses, and was confirmed on May 25, 2005.
- i. *Congressional Record*, 80<sup>th</sup> Cong., 1<sup>st</sup> sess., July 1, 1947, p. 7990.
- j. Local Section, "Judge Margold Dies at 48; Funeral Will Be Held Today," *Washington Post*, Dec. 17, 1947, p. B2.
- k. 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.
- l. *Ibid.*
- m. "Senate Unit Blocks Truman on Judgeships," *Washington Post*, Sept. 18, 1951, p. 12.
- n. 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, 82<sup>nd</sup> Cong., 1<sup>st</sup> 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.

- o. *Legislative and Executive Calendar*, Committee on the Judiciary, 94<sup>th</sup> Cong., 2<sup>nd</sup> sess., p. 247. *Congressional Quarterly*, *Inside Congress*, “‘Senatorial Courtesy’ Derails Ford Judgeship Nomination,” *Congressional Quarterly*, May 8, 1976, p. 1124.
- p. *Legislative and Executive Calendar*, Committee on the Judiciary, 95<sup>th</sup> Cong., 2<sup>nd</sup> sess., p. 212.
- q. *Legislative and Executive Calendar*, Committee on the Judiciary, 96<sup>th</sup> Cong., 1<sup>st</sup> sess., p. 206.
- r. “Heflin Votes Crucial in Defeat of Denton-Backed Judicial Nomination,” *The Associated Press*, June 6, 1986.
- s. 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.
- t. *Congressional Record*, daily edition, vol. 149, May 1, 2003, p. D436.

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## **Acknowledgments**

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