The Need for an Established Senate Rule on Election-Year and Lame Duck Session Supreme Court Nominations

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THE NEED FOR AN ESTABLISHED SENATE RULE ON ELECTION-YEAR AND LAME DUCK SESSION SUPREME COURT NOMINATIONS

By Jacob R. Weaver*

Introduction

In 2016, the Republican-held Senate refused to hold a hearing on President Barack Obama’s nominee, Merrick Garland, sparking outrage among the Democratic Party. Then-Senate Majority Leader Mitch McConnell justified his party’s actions based on what became known as the “McConnell Rule.” This controversial rule holds that during years of presidential elections, when the president and the Senate majority are of different parties, the Senate is not expected to confirm the president’s Supreme Court nominees; but, when the president and Senate majority are of the same party, vacancies may be filled.

When the Senate applied this rule in 2020, the stakes were even higher. Revered liberal stalwart Justice Ruth Bader Ginsburg passed away only 46 days before the 2020 presidential election. Invoking the McConnell Rule, the Republican-held Senate moved forward with the confirmation of President Trump’s nominee Amy Coney Barrett. This contentious move again infuriated Democrats, and the

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topic of court-packing soon became a central issue for the presidential campaign.\(^6\) Now that Justice Barrett has been appointed and the presidential election has passed, it is useful to look back on the history of Supreme Court nominations during presidential election years. Such a review suggests that the so-called McConnell Rule is rooted in valid historical precedent. In fact, viewed in light of American history, even a Trump lame duck nomination and confirmation would have been valid.

This blog post argues that the Senate should distill this historical precedent into an explicit Rule of the Senate that will govern the chamber going forward. The rule should obligate the Senate to either (1) hold a vote to confirm the election-year or lame duck nominee, or (2) hold a vote to postpone action on the nomination. If a vote to postpone action on the nomination fails, the rule should then compel the Senate to hold a vote to confirm the nominee. Such a rule removes all doubt about the Senate’s authority to act or refuse to act on election-year and lame duck nominees, exposes unfounded threats of retaliation by minority parties, and best conforms to the Constitution.

**Historical Precedent**

Presidents, including Trump, have made thirty-five nominations during election years (nominations made between January 1 and the election) or lame duck sessions (nominations made between the election and the transition between presidents).\(^7\) In fact, eight presidents have made two or more nominations during such periods, including President Tyler who put forth nine nominees.\(^8\)

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7. See *Supreme Court Nominations (1789-Present)*, U.S. SENATE (last visited Apr. 14, 2021), https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.html; see infra Appendix. Note that this list does not include sitting justices nominated to chief justice during presidential election years or lame duck sessions, of which there are two: William Cushing, who declined the appointment, and Abe Fortas, whose nomination was filibustered and withdrawn. Id.
8. Tyler nominated John Spencer twice, Reuben Walworth three times, and Edward King twice. He also nominated Samuel Nelson (the only nominee confirmed) and John Read. See *Supreme Court Nominations*, supra note 7; see infra Appendix.
But only four presidents—Washington, Jackson, Benjamin Harrison, and Wilson—secured multiple appointments.9

Of the thirty-five nominees, the Senate did not confirm sixteen, including eight of President Tyler’s candidates.10 Presidents John Quincy Adams, Fillmore, Buchanan, Hayes, Lyndon Johnson, and Obama also saw their picks founder in the Senate.11 But not all the members of this distinguished list were rebuffed in the same way. Merrick Garland nominated by Obama, Stanley Matthews nominated by Hayes, and Jeremiah Black nominated by Buchanan are among those who saw their nominations lapse.12 Additionally, multiple presidents have withdrawn their candidates, and Senate votes to postpone sank the likes of John Crittenden and Edward King.13 John Spencer, Tyler’s pick during the 1844 election year, has the dubious honor of being the only election-year or lame duck nominee to be rejected by a Senate vote.14

**Election-Year Nominations**

Eleven of nineteen election-year picks have now been confirmed.15 If one does not count President Washington’s 1796 picks, which occurred in an era of significantly less partisanship, those nominees confirmed and those rejected are nearly even: nine to eight.16

Presidents not named Washington who had successful election-year nominations include Jefferson, Cleveland, Benjamin Harrison, Taft, Wilson, Hoover, Franklin Roosevelt, and Trump.17 Before Amy Coney Barrett’s confirmation, the last successful election-year nomination occurred during the 1940 campaign, when Roosevelt

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9. John Adams secured two lame duck confirmations, but there existed only one vacancy. Adams first nominee, John Jay, declined the appointment after the Senate confirmed him. See Supreme Court Nominations, supra note 7; see infra Appendix. Jay’s declination allowed John Adams to nominate John Marshall, whom the Senate confirmed as chief justice on January 20, 1801.

10. See Supreme Court Nominations, supra note 7; see infra Appendix.

11. Id.

12. Id.

13. Id.


15. See Supreme Court Nominations, supra note 7; see infra Appendix.

16. Samuel Chase, Washington’s first election-year nominee, was confirmed with a voice vote. Oliver Ellsworth, Washington’s second nominee, was confirmed by a vote of twenty-one to one. See Supreme Court Nominations, supra note 7; see infra Appendix.

17. See Supreme Court Nominations, supra note 7; see infra Appendix.
nominated and the Senate confirmed Frank Murphy. Since then, just three election-year nominations have been made—one by Lyndon Johnson in 1968, one by Obama in 2016, and one by Trump in 2020. Both Johnson’s pick and Obama’s pick failed.

Only once has the Senate confirmed an election-year nominee of a president belonging to a different party. This occurred during the 1888 election, when a Republican Senate confirmed Democrat President Cleveland’s nominee, Melville Fuller. As Dan McLaughlin of the National Review noted in his analysis of Supreme Court nominees, the Court’s docket-backlog crisis likely spurred Republicans to concede the pick. The other eight non-Washington election-year picks that saw confirmation were all nominated by a president whose party held a majority in the Senate.

Justice Barrett was the first successful election-year nomination in eighty years. Moreover, her confirmation came the closest ever to election day—just eight days elapsed between her confirmation on October 26, 2020 and the election on November 3, 2020. The abolition of the filibuster for Supreme Court nominees certainly

18. Id.
19. Id.
20. Id. Unique circumstances sank Johnson’s nominee, Homer Thornberry. In 1968, then-Chief Justice Earl Warren approached Johnson about the possibility of retirement. Bartee Haile, Bartee Haile: Lyndon Johnson loses Supreme Court fight, THE COURIER OF MONTGOMERY CNTY. (June 11, 2020, 2:53 PM), https://www.yourconroenews.com/neighborhood/moco/opinion/article/Bartee-Haile-Lyndon-Johnson-loses-Supreme-Court-15333495.php. Acting on this request, Johnson nominated Associate Justice Abe Fortas to chief justice, and he nominated Thornberry to fill what would have been Fortas’s vacant associate justice seat. But, after ethical concerns were raised about Fortas, Republicans filibustered, forcing Johnson to withdraw Fortas’s nomination. Id. Both Warren and Fortas remained on the court, leaving no vacancy for Thornberry to fill. Consequently, Johnson was forced to withdraw Thornberry’s nomination.
22. Id. The Senate confirmed Fuller as chief justice by a vote of forty-one to twenty. See Supreme Court Nominations, supra note 7; see infra Appendix.
23. McLaughlin, supra note 21.
24. See id; see infra Appendix.
helped Senator McConnell expedite the confirmation process, but conducting the process in less than a month was a feat, especially considering that the last five nominees took between sixty-six and ninety-two days from nomination to confirmation.

LAME DUCK NOMINATIONS

If the Senate failed to confirm Barrett before the election, President Trump and the Republicans could have attempted to fill the seat during the lame duck session. There would have been precedent for this move, as several presidents have nominated candidates during lame duck sessions after elections they or their party lost.

Surprisingly, the Senate has confirmed almost as many lame duck nominees as non-Washington election-year nominees. In fact, the success rate is fifty percent. Eight of sixteen lame duck nominations have succeeded. Federalist John Adams, who lost the 1800 presidential election, saw both John Jay and John Marshall confirmed to the court by the Federalist-held Senate, though John Jay ultimately declined the appointment. The other lame duck presidents to boast successful lame duck nominations include Jackson, Van Buren, Tyler, Hayes, and Benjamin Harrison. Jackson’s and Hayes’ party won the presidential election, whereas the Adams, Van Buren, Tyler, and Harrison lame duck confirmations came after their party lost the presidential election.

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29. See Supreme Court Nominations, supra note 7; see infra Appendix.

30. Id.

31. Id.

32. Id.; Party Division, U.S. Senate (last visited Apr. 14, 2021), https://www.senate.gov/history/partydiv.htm. John Jay served as chief justice from September 24, 1789 to his resignation on June 29, 1795. Adams subsequently renominated him as chief justice on December 18, 1800. See Supreme Court Nominations, supra note 7. But, after the Senate confirmed Jay on December 19, Jay declined the appointment. Id. Adams then nominated Marshall to fill the vacancy. Id.

33. These successful nominees included William Smith, John Catron, Peter Daniel, Samuel Nelson, William Woods, and Howell Jackson. Id.

Though most confirmations occurred when the president and the Senate were of the same political party,\(^{35}\) two—Tyler and Hayes—occurred when the Senate and president were from different parties.\(^{36}\) Independent President Tyler and the Whig-held Senate were in a unique position to strike a deal, as the Democrats retook both the presidency and the Senate in the 1844 election.\(^{37}\) In Republican President Hayes’ case, his party won the presidency and brought the Senate to a tie in the 1880 election, so the Democrat-held Senate conceded one of Hayes’ two lame duck nominations.\(^{38}\)

All failed nominations, except for a single instance, have one thing in common: The president’s party did not control the Senate. The Jackson-leaning Senate postponed John Quincy Adams’ pick, John Crittenden, allowing President Jackson to fill the vacancy.\(^{39}\) Two of Independent President Tyler’s picks were withdrawn, and one lapsed.\(^{40}\) Whig President Fillmore also attempted two lame duck nominations after his election-year pick lapsed, but both failed in the Democrat-held Senate.\(^{41}\) And, despite his party winning the presidency and tying the Senate, Republican President Hayes could not get his second lame duck nominee, Stanley Matthews, through the Democrat-held Senate.\(^{42}\) The notable exception is Democrat President Buchanan’s pick, Jeremiah Black, who saw his lame duck nomination expire in 1861 after the Democrat-held Senate failed to procure a motion to proceed.\(^{43}\)

If President Trump had lost the election yet succeeded in having his pick confirmed during the lame duck period, it would be the first instance of a successful lame duck nominee since Howell Jackson in 1893.\(^{44}\) Such a move would be even more difficult now, as the

\(^{35}\) See Party Division, supra note 32; see infra Appendix.

\(^{36}\) McLaughlin, supra note 21.

\(^{37}\) See id.; Party Division, supra note 32.

\(^{38}\) See Presidential Elections, supra note 34; Party Division, supra note 32. Republicans and Democrats each held thirty-seven seats. Id. William Malone, a Readjuster, and David Davis, an independent, held the other two seats. Id.; The Great Senate Deadlock of 1881, U.S. Senate (last visited Jan. 13, 2021), https://www.senate.gov/artandhistory/history/common/briefing/Senate_Deadlock_1881.html#:~:text=It%20is%20difficult%20to%20discuss,seven%20Democrats%2C%20and%20two%20independents.

\(^{39}\) See Supreme Court Nominations, supra note 7; Party Division, supra note 32; see infra Appendix.

\(^{40}\) See Supreme Court Nominations, supra note 7; see infra Appendix.

\(^{41}\) Id.


\(^{43}\) See Supreme Court Nominations, supra note 7; Composition of Congress, supra note 42; see infra Appendix.

\(^{44}\) See Supreme Court Nominations, supra note 7; see infra Appendix.
Twentieth Amendment shortened the lame duck session.45 Because the Republicans lost the Senate, the confirmation would have had to occur before January 3, 2021 or, if Republicans had kept the Senate, before President Biden’s inauguration on January 20, 2021.46

Reform

While the forgoing precedent may justify Mitch McConnell and the Republican’s controversial actions both in 2016 and 2020, the Senate should craft a Senate rule that explicitly endorses this historical precedent with a slight variation. Namely, for all election-year and lame duck nominations, the Senate must (1) hold a vote to confirm the nominee, or (2) hold a vote to postpone action on the nomination until after the election or the president-elect takes office. Should a vote to postpone fail, the proposed rule would obligate the Senate to hold a vote to confirm the nominee before the election or the inauguration.

Article I, section five, clause two of the Constitution, which allows each house to “determine the Rules of its Proceedings,” authorizes the passage of the proposed rule.47 And the Senate would pass the proposal pursuant to Senate Rule XXII, section 2, which requires an affirmative vote by two-thirds of the senators in order to close debate on “a measure or motion to amend the Senate rules,” thus giving the proposal an air of bipartisan support.48

The proposed rule would state as follows:

When a vacancy on the Supreme Court occurs during a presidential election year and the president nominates a candidate to fill the vacant seat:

1. The Senate shall, in accordance with other rules of this chamber:
   a. Hold a vote to confirm the nominee; or,

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b. Hold a vote to postpone action on the nomination until the election concludes.

2. Should a vote to postpone action on the nomination fail, the Senate shall hold a vote to confirm the nominee before the election. 49

When a vacancy on the Supreme Court occurs during a presidential election year and the Senate voted to postpone action on the nomination until after the election or when a vacancy on the Supreme Court occurs during a lame duck session and the president nominates a candidate to fill the vacant seat:

1. The Senate shall, in accordance with other rules of this chamber:
   a. Hold a vote to confirm the nominee; or,
   b. Hold a vote to postpone action on the nomination until after the president-elect takes office.

2. Should a vote to postpone action on the nomination fail, the Senate shall hold a vote to confirm the nominee before the president-elect takes office. 50

This proposal differs from the historical precedent in that it forces the Senate to take action in recognition of the president's nomination: it cannot simply table the nominee indefinitely. But which of the two options the Senate takes remains within the Senate's discretion, maintaining the historical presumption that the Senate will vote to confirm the nominee when the president is of the same party as the Senate majority, and that the Senate will refuse to consider the nomination if the president is of a different party than the Senate Majority.

This rule has several salutary characteristics. First, the rule removes all doubt about the Senate's authority to act or refuse to act on an election-year or lame duck nominee. While only one election-year Supreme Court vacancy occurred between 1940 and 2012, two

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49. The Senate would also want to consider establishing time parameters on this rule, providing the Senate with discretion to take no action when a president nominates a candidate within a certain number of days before an election. Such discretion is necessary to prevent an unreasonable application of the rule. For instance, it would be unreasonable to force the Senate to follow these procedures if the president nominated a candidate the day before an election, but the Senate should still be allowed to act in such a case. As historical precedent indicates, an aligned president and Senate can quickly confirm a nominee: The Senate confirmed the average election-year nominee in 24.6 days and the average lame duck nominee in 6.9 days. See Supreme Court Nominations, supra note 7.

50. For reasons addressed in supra note 49, the Senate would want to consider time parameters on this rule as well, providing the Senate with discretion to take no action when a president nominates a candidate within a certain number of days before the inauguration.
have occurred within the last two presidential election years.\textsuperscript{51} Instead of rehashing the historical, legal, and policy debate each time such a vacancy occurs, the proposed rule will settle the debate, preventing cries of “constitutional crisis” and lowering the strain on American democracy.\textsuperscript{52}

Second, the rule exposes unjustified retaliatory threats by minority parties. As noted, multiple presidents have nominated and Senate have confirmed nominees during election years and lame duck sessions, including lame duck sessions where the majority party lost the presidency, the Senate, or both.\textsuperscript{53} When such nominations occur, minority parties often rattle their sabers. For instance, Democrat President Van Buren’s pick, Peter Daniel, whom the Democrat-held Senate confirmed just days before Whig President-Elect Harrison took office, faced intense Whig opposition.\textsuperscript{54} There is, however, no historical precedent for major retaliation by minority parties once they have reclaimed the presidency and a Senate majority.

The distillation of historical precedent into a rule will result in an objective standard by which the American public can judge majority actions, regardless of whether Republicans or Democrats invoke the rule. Either the Senate majority followed the rule, or it did not. Thus, only in the case where a majority forsakes the rule can a minority legitimately claim a grievance and in good conscience threaten retaliation.

Finally, the rule conforms to the Constitution. Article II, section two, states that the president “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the Supreme Court.”\textsuperscript{55} While this language implies that the president has a constitutional duty to nominate, it does not imply that the Senate has a constitutional duty to consent to the president’s nominee. The language and structure suggest, however, that the Senate must recognize the nomination and take some action on the nominee, i.e., provide advice or consent.

The proposed rule permits a president to fulfill his or her constitutional duty to nominate a Supreme Court candidate, and it balances the constitutional requirement of senatorial action with the discretion the Constitution entrusts to the Senate. Specifically,

\begin{itemize}
  \item See Supreme Court Nominations, supra note 7.
  \item See Supreme Court Nominations, supra note 7; see infra Appendix.
  \item U.S. CONST. Art. II, § 2 (emphasis added).
\end{itemize}
requiring a vote to postpone as opposed to indefinitely tabling a nominee forces each senator to take an explicit stance on the nomination—in other words, provide advice. It does not, however, require senators to provide consent. The rule also effectively ends the debate about the constitutional legitimacy of allowing “the people” to have a say in the nomination through the upcoming election. Simply put, the only “say” in the nomination and confirmation of Supreme Court justices that the Constitution grants the people—no matter when a vacancy occurs—is through their currently elected representatives.56

CONCLUSION

It is time to bury the controversy over election-year and lame duck session Supreme Court nominations and confirmations. History is clear: Presidents who can rally their respective parties for one last vote on a Supreme Court nominee may do so, even near an election or during a lame duck session; and those presidents who send an election-year or lame duck nominee to a Senate held by the opposing party are at the mercy of that Senate. An explicit rule that clearly states that the Senate has the power to either confirm or postpone an election-year or lame duck Supreme Court nominee removes all doubt about the Senate’s authority, exposes unfounded threats of retaliation by minority parties, and best conforms to the Constitution.

56. See Andrew C. McCarthy, On Supreme Court Nominations, All That Counts is the Constitution, NEWSWEEK (Sept. 22, 2020, 7:00 AM), https://www.newsweek.com/supreme-court-nominations-all-that-counts-constitution-opinion-1533325.
### Failed Lame Duck Nominees

<table>
<thead>
<tr>
<th>Nomination Date</th>
<th>Nominee</th>
<th>President</th>
<th>Outgoing President’s Party</th>
<th>Senate Majority</th>
<th>Incoming President’s Party</th>
<th>Result</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan. 26, 1881</td>
<td>Stanley Matthews</td>
<td>Hayes</td>
<td>Republican</td>
<td>Democratic</td>
<td>Republican</td>
<td>No Action</td>
<td>Renominated by Garfield &amp; confirmed by a vote of 24 to 23</td>
</tr>
<tr>
<td>Feb. 5, 1861</td>
<td>Jeremiah Black</td>
<td>Buchanan</td>
<td>Democrat</td>
<td>Democratic</td>
<td>Republican</td>
<td>Failed Motion to Proceed</td>
<td></td>
</tr>
<tr>
<td>Feb. 14, 1853</td>
<td>William Micou</td>
<td>Fillmore</td>
<td>Whig</td>
<td>Democratic</td>
<td>Democratic</td>
<td>No Action</td>
<td></td>
</tr>
<tr>
<td>Jan. 3, 1853</td>
<td>George Badger</td>
<td>Fillmore</td>
<td>Whig</td>
<td>Democratic</td>
<td>Democratic</td>
<td>Withdrawn</td>
<td></td>
</tr>
<tr>
<td>Feb. 7, 1845</td>
<td>John Read</td>
<td>Tyler</td>
<td>Independent</td>
<td>Whig</td>
<td>Democratic</td>
<td>No Action</td>
<td></td>
</tr>
<tr>
<td>Dec. 4, 1844</td>
<td>Reuben Walworth</td>
<td>Tyler</td>
<td>Independent</td>
<td>Whig</td>
<td>Democratic</td>
<td>Withdrawn</td>
<td>Nominated three times by Tyler</td>
</tr>
<tr>
<td>Dec. 4, 1844</td>
<td>Edward King</td>
<td>Tyler</td>
<td>Independent</td>
<td>Whig</td>
<td>Democratic</td>
<td>Withdrawn</td>
<td>Nominated twice by Tyler</td>
</tr>
</tbody>
</table>

### Successful Lame Duck Nominees

<table>
<thead>
<tr>
<th>Nomination Date</th>
<th>Nominee</th>
<th>President</th>
<th>Outgoing President’s Party</th>
<th>Senate Majority</th>
<th>Incoming President’s Party</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feb. 2, 1893</td>
<td>Howell Jackson</td>
<td>B. Harrison</td>
<td>Republican</td>
<td>Republican</td>
<td>Democratic</td>
<td></td>
</tr>
<tr>
<td>Dec. 15, 1880</td>
<td>William Woods</td>
<td>Hayes</td>
<td>Republican</td>
<td>Democratic</td>
<td>Republican</td>
<td></td>
</tr>
<tr>
<td>Feb. 4, 1845</td>
<td>Samuel Nelson</td>
<td>Tyler</td>
<td>Independent</td>
<td>Whig</td>
<td>Democratic</td>
<td></td>
</tr>
<tr>
<td>Feb. 26, 1841</td>
<td>Peter Daniel</td>
<td>Van Buren</td>
<td>Democratic</td>
<td>Democratic</td>
<td>Whig</td>
<td></td>
</tr>
<tr>
<td>Mar. 3, 1837</td>
<td>John Catron</td>
<td>Jackson</td>
<td>Democratic</td>
<td>Democratic</td>
<td>Jackson</td>
<td>Filled new seat</td>
</tr>
<tr>
<td>Mar. 3, 1837</td>
<td>William Smith</td>
<td>Jackson</td>
<td>Democratic</td>
<td>Democratic</td>
<td>Jackson</td>
<td>Filled new seat</td>
</tr>
<tr>
<td>Jan. 20, 1801</td>
<td>John Marshall</td>
<td>Adams</td>
<td>Federalist</td>
<td>Federalist</td>
<td>Democratic-Republican</td>
<td>Nominated to chief justice</td>
</tr>
<tr>
<td>Dec. 18, 1800</td>
<td>John Jay</td>
<td>Adams</td>
<td>Federalist</td>
<td>Federalist</td>
<td>Democratic-Republican</td>
<td>Nominated to chief justice but declined appointment</td>
</tr>
</tbody>
</table>

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3. See Id.
5. See supra Appendix note 2.
6. See supra Appendix note 1.
7. See Id.
### Failed Election Year Nominees

<table>
<thead>
<tr>
<th>Nomination Date</th>
<th>Nominee</th>
<th>President</th>
<th>Outgoing President’s Party</th>
<th>Senate Majority</th>
<th>Presidential Election Results</th>
<th>Result</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mar. 16, 2016</td>
<td>Merrick Garland</td>
<td>Obama</td>
<td>Democratic</td>
<td>Republican</td>
<td>Republican</td>
<td>No Action</td>
<td>Nomeinated twice by Obama</td>
</tr>
<tr>
<td>Jun. 26, 1968</td>
<td>Homer Thornberry</td>
<td>L. Johnson</td>
<td>Democratic</td>
<td>Democratic</td>
<td>Republican</td>
<td>Withdrawn</td>
<td>Nomeinated three times by Johnson</td>
</tr>
<tr>
<td>Aug. 16, 1852</td>
<td>Edward Bradford</td>
<td>Fillmore</td>
<td>Whig</td>
<td>Democratic</td>
<td>Democratic</td>
<td>No Action</td>
<td>Nomeinated three times by Fillmore</td>
</tr>
<tr>
<td>Jun. 17, 1844</td>
<td>John Spencer (II)</td>
<td>Tyler</td>
<td>Independent</td>
<td>Whig</td>
<td>Democratic</td>
<td>Withdrawn</td>
<td>Nomeinated twice by Tyler</td>
</tr>
<tr>
<td>Jun. 17, 1844</td>
<td>Reuben Walworth (II)</td>
<td>Tyler</td>
<td>Independent</td>
<td>Whig</td>
<td>Democratic</td>
<td>No Action</td>
<td>Nomeinated three times by Tyler</td>
</tr>
<tr>
<td>Jun. 5, 1844</td>
<td>Edward King</td>
<td>Tyler</td>
<td>Independent</td>
<td>Whig</td>
<td>Democratic</td>
<td>Postponed</td>
<td>Nomeinated twice by Tyler</td>
</tr>
<tr>
<td>Mar. 13, 1844</td>
<td>Reuben Walworth (I)</td>
<td>Tyler</td>
<td>Independent</td>
<td>Whig</td>
<td>Democratic</td>
<td>Withdrawn</td>
<td>Nomeinated three times by Tyler</td>
</tr>
<tr>
<td>Jan. 8, 1844</td>
<td>John Spencer (I)</td>
<td>Tyler</td>
<td>Independent</td>
<td>Whig</td>
<td>Democratic</td>
<td>Rejected</td>
<td>Nomeinated twice by Tyler</td>
</tr>
</tbody>
</table>

### Successful Election Year Nominees

<table>
<thead>
<tr>
<th>Nomination Date</th>
<th>Nominee</th>
<th>President</th>
<th>Outgoing President’s Party</th>
<th>Senate Majority</th>
<th>Presidential Election Results</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oct. 26, 2020</td>
<td>Amy Coney Barrett</td>
<td>Trump</td>
<td>Republican</td>
<td>Republican</td>
<td>Democratic</td>
<td>Nomeinated to chief justice</td>
</tr>
<tr>
<td>Jan. 4, 1940</td>
<td>Frank Murphy</td>
<td>F.D. Roosevelt</td>
<td>Democratic</td>
<td>Democratic</td>
<td>Democratic (Re-elected)</td>
<td>Nomeinated to chief justice</td>
</tr>
<tr>
<td>Feb. 15, 1932</td>
<td>Benjamin Cardozo</td>
<td>Hoover</td>
<td>Republican</td>
<td>Republican</td>
<td>Democratic</td>
<td>Nomeinated to chief justice</td>
</tr>
<tr>
<td>Jul. 14, 1916</td>
<td>John Clarke</td>
<td>Wilson</td>
<td>Democratic</td>
<td>Democratic</td>
<td>Democratic (Re-elected)</td>
<td>Nomeinated to chief justice</td>
</tr>
<tr>
<td>Jan. 28, 1916</td>
<td>Louis Brandeis</td>
<td>Wilson</td>
<td>Democratic</td>
<td>Democratic</td>
<td>Democratic (Re-elected)</td>
<td>Nomeinated to chief justice</td>
</tr>
<tr>
<td>Feb. 19, 1912</td>
<td>Mahlon Pitney</td>
<td>Taft</td>
<td>Republican</td>
<td>Republican</td>
<td>Democratic</td>
<td>Nomeinated to chief justice</td>
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<tr>
<td>Jul. 19, 1892</td>
<td>George Shiras Jr.</td>
<td>B. Harrison</td>
<td>Republican</td>
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<td>Apr. 30, 1888</td>
<td>Melville Fuller</td>
<td>Cleveland</td>
<td>Democratic</td>
<td>Republican</td>
<td>Republican</td>
<td>Nomeinated to chief justice</td>
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<tr>
<td>Mar. 22, 1804</td>
<td>William Johnson</td>
<td>Jefferson</td>
<td>Democratic-Republican</td>
<td>Democratic-Republican</td>
<td>Democratic-Republican (Re-elected)</td>
<td>Nomeinated to chief justice</td>
</tr>
<tr>
<td>Mar. 3, 1796</td>
<td>Oliver Ellsworth</td>
<td>Washington</td>
<td>None</td>
<td>None</td>
<td>Federalist</td>
<td>Nomeinated to chief justice</td>
</tr>
<tr>
<td>Jan. 26, 1796</td>
<td>Samuel Chase</td>
<td>Washington</td>
<td>None</td>
<td>None</td>
<td>Federalist</td>
<td>Nomeinated to chief justice</td>
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5. **Total**

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<td>Election</td>
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