

# Recess Appointments

This is a calculated act of defiance against Congress

↪ Situation:

1. The president wants to appoint someone to a vacant government position.
2. The opposing party uses the filibuster or extended debates to block confirmation of the presidential nominee
3. The president waits for a Congressional recess or vacation, and then appoints the nominee directly into the vacancy, with no Congressional approval!
4. The appointment lasts until the end of the next session of Congress (about a year)

Recess appointments are authorized by Article II, Section 2 of the U.S. Constitution, which states:

*“The President shall have the Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session”*



## How can Senators block an executive nominee?

- Reject the nominee in a Senate confirmation vote
- Secret hold
  - ↪ Any Senator can anonymously block a nominee from moving forward; no reason need be given.
    - ↪ Only the political party of the politician placing the ‘hold’ will be known.
- Delay the candidate’s nomination in committee, by not having the committee vote to advance their candidacy out of the committee.
- Call the Senate into pro-forma sessions, so that it is legally not in recess

## Why might Senators put a ‘hold’ on a nominee?

- Playing politics
  - ↪ Why put the opposite parties preferred people into positions of power?
  - ↪ Put a hold on a nominee, only to quietly negotiate later with the President so that they get something they want in order to release the hold.
- Don’t like the merits of their positions (abortion, gun control, capital punishment)
- Questions related to the qualifications of the nominee.

## How can this present a problem?

- ↪ Backlog of nominations to deliberate on takes time away from other legislative priorities.
  - ↪ Many positions, some of which vital, are left unfilled.
    - ↪ Of the 5 members of the National Transportation Safety Board, only three could meet in the aftermath of an airliner splashdown in the Hudson River, because two positions were being 'held'

## How many are left vacant (recent examples)?

- ↪ 15 months into his presidency, Bush Jr had 5 nominees pending on the Senate floor.
- ↪ 15 months into his presidency, Obama had 77 nominees pending, 58 of whom had been waiting for over two weeks, and 44 of those have been waiting more than a month. That number pending was over 100 a month later
  - ↪ July 2010, Obama had 189 nominees pending, 49 of whom waiting more than six months.

# Noteworthy Recess Appointments

## ❖ 15 Supreme Court justices were Recess Appointments!

### Bush Jr

- ↳ Appointed Charles Pickering (2004) over objections of civil rights advocates.
- ↳ Julie Myers (2005) to the US Immigration and Customs Enforcement. Objections raised because she had never managed a large government agency. (USCIS has a \$4 billion budget and 15,000 employees.)
- ↳ Appointed John Bolton as representative to the United Nations, despite his condemnation of the UN system.

### Clinton

- ↳ Appointed James Hormel as ambassador to Luxembourg (1999). He is a gay philanthropist, hence why he was blocked by Senate Republicans.
- ↳ Appointed Bill Lee, who advocated for affirmative action.

### Kennedy

- ↳ Appointed Thurgood Marshall to the 2<sup>nd</sup> US Circuit Court in October 1961 (getting around opposition from southern Senators)

### Eisenhower

- ↳ Appointed three Supreme Court justices – Earl Warren (1953), William Brennan (1956) and Potter Stewart (1958)

### Washington

- ↳ Appointed John Rutledge to the Supreme Court in 1775. Why controversial? He gave a speech denouncing the Jay Treaty and said the president should die rather than agree.

## History of Recess Appointments by Administration since 1933

- 2021-now Joe Biden tbd Democrat (by February 2021)
- 2017-2021 Trump 0 Republican
- 2009-2017 Obama 32 Democrat
- 2001-2009 Bush Jr 171 Republican
- 1993-2001 Clinton 139 Democrat
- 1989-1993 Bush Sr 77 Republican
- 1981-1989 Reagan 243 Republican
- 1977-1981 Carter 68 Democrat
- 1974-1977 Ford 12 Republican
- 1969-1974 Nixon 41 Republican
- 1963-1974 L.Johnson 36 Democrat
- 1961-1963 Kennedy 53 Democrat
- 1953-1961 Eisenhower 193 Republican
- 1945-1953 Truman 195 Democrat
- 1933-1945 F.Roosevelt 89 Democrat

Also

- 1901-1909 T.Roosevelt Republican 160 in 1903 alone!