

Presidential Recess Appointments

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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”

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 Senators block an executive nominee?

☞ Reject the nominee in a Senate confirmation vote

☞ Secret hold

☞ Any single 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 candidates nomination in committee, by not having the committee vote to advance their candidacy out of the committee.

HISTORY BY ADMINISTRATION

2021-now	Joe Biden	Dem.	0 (by February 2021)
2017-2021	Trump	Rep.	- n/a -
2009-2017	Obama	Dem.	32
2001-2009	Bush Jr	Rep.	171
1993-2001	Clinton	Dem.	139
1989-1993	Bush Sr	Rep.	77
1981-1989	Reagan	Rep.	243
1977-1981	Carter	Dem.	68
1974-1977	Ford	Rep.	12
1969-1974	Nixon	Rep.	41
1963-1974	L.Johnson	Dem.	36
1961-1963	Kennedy	Dem.	53
1953-1961	Eisenhower	Rep.	193
1945-1953	Truman	Dem.	195
1933-1945	F.Roosevelt	Dem.	89
1929-1933	Hoover	Rep.	- n/a -
1923-1929	Coolidge	Rep.	- n/a -
1921-1923	Harding	Rep.	- n/a -
1913-1921	Wilson	Dem.	- n/a -
1909-1913	Taft	Rep.	- n/a -
1901-1909	T.Roosevelt	Rep.	160 in 1903 alone!
1897-1901	McKinley	Rep.	- n/a -
1893-1897	Cleveland	Dem.	- n/a -
1889-1893	Harrison	Rep.	- n/a -
1885-1889	Cleveland	Dem.	- n/a -
1881-1885	Arthur	Rep.	- n/a -
1881	Garfield	Rep.	- n/a -
1877-1881	Hayes	Rep.	- n/a -
1869-1877	Grant	Rep.	- n/a -
1865-1869	A.Johnson	Dem.Nat'l.Union	- n/a -
1861-1865	Lincoln	Rep.Nat'l.Union	- n/a -
1857-1861	Buchanan	Dem.	- n/a -
1853-1857	Pierce	Dem.	- n/a -
1850-1853	Fillmore	Whig	- n/a -
1849-1850	Taylor	Whig	- n/a -
1845-1849	Polk	Dem.	- n/a -
1841-1845	Tyler	Whig	- n/a -
1841	Harrison	Whig	- n/a -
1837-1841	Van Buren	Dem.	- n/a -
1829-1837	Jackson	Dem.	- n/a -
1825-1829	J.Q.Adams	Dem.-Rep.; Nat'l Rep.	- n/a -
1817-1825	Monroe	Dem.-Rep.	- n/a -
1809-1817	Madison	Dem.-Rep.	- n/a -
1801-1809	Jefferson	Dem.-Rep.	- n/a -
1797-1801	J.Adams	Federalist	- n/a -
1789-1797	Washington	no political affiliation	- n/a -

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 2nd 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.