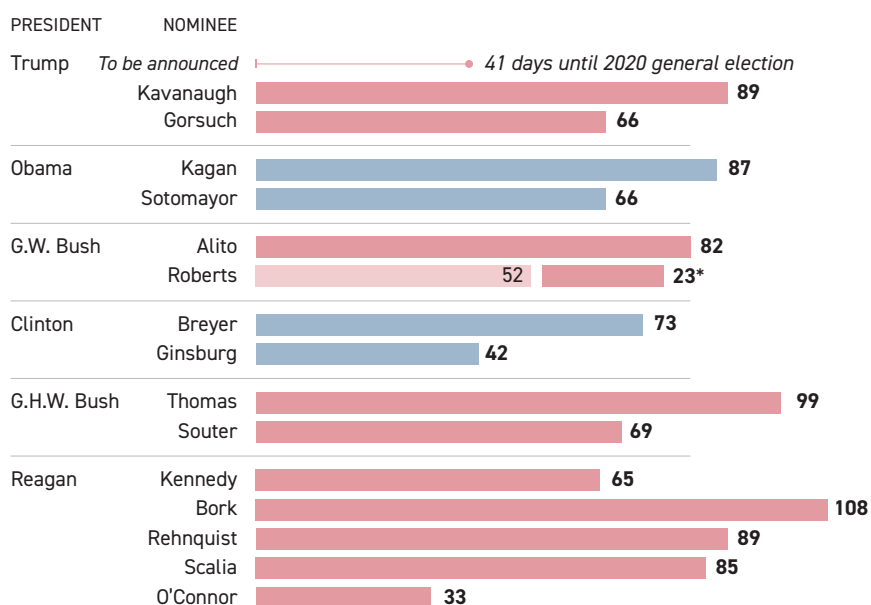Sept. 22, 2020

How a Supreme Court justice is nominated and confirmed

Over the past 40 years, the average time for the Senate to reach a final vote on a Supreme Court justice nominee has been 72 days — nearly twice the time left before the 2020 general election.

The modern process of confirming Supreme Court justices has three major stages: First, the president chooses and announces their nominee for the court. Second, the nominee is exhaustively vetted by the Senate Judiciary Committee. In the final stage, the whole Senate debates and votes to confirm or reject the nominee.

Historically, senators have avoided filibustering the confirmation process, and a change to Senate rules in 2017 effectively ended the practice by allowing debate to end with a simple majority vote. As a result, the party that controls the Senate can complete the entire process without any votes from the minority party — and in recent years, confirmation votes have increasingly fallen along party lines.

Number of days between nomination and final vote for Supreme Court nominees, 1980 to present

PRESIDENT	NOMINEE	Days
Trump	To be announced	41 days until 2020 general election
	Kavanaugh	89
	Gorsuch	66
Obama	Kagan	87
	Sotomayor	66
G.W. Bush	Alito	82
	Roberts	52 → 23*
Clinton	Breyer	73
	Ginsburg	42
G.H.W. Bush	Thomas	99
	Souter	69
Reagan	Kennedy	65
	Bork	108
	Rehnquist	89
	Scalia	85
	O'Connor	33

* Roberts was initially nominated for associate justice, but after the death of Chief Justice Rehnquist, Roberts' name was withdrawn and renominated for Chief Justice.
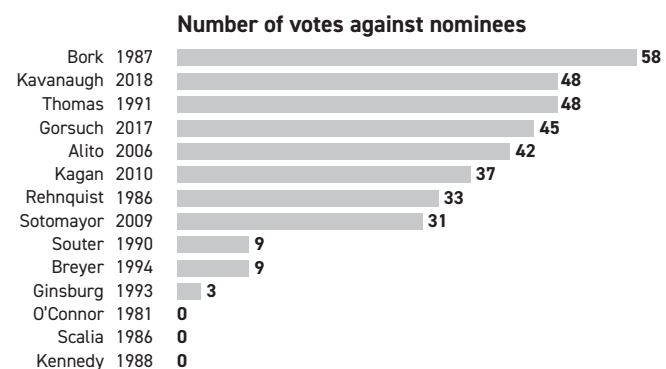
Senate process to confirm a Supreme Court justice

SENATE JUDICIARY COMMITTEE

FULL SENATE DEBATE AND VOTE

1 Initial research on nominee

Prior to a hearing, Judiciary committee members review information about the nominee from several sources, including a detailed questionnaire for the nominee drafted by the committee.

FBI INVESTIGATION

Q&A DETAILED QUESTIONNAIRE

A+ AMERICAN BAR ASSOCIATION RATING

At this stage, the nominee will typically meet individually with members of the committee and other interested senators in their offices.

2 Hearing before the Senate Judiciary Committee

The committee will eventually hold a public hearing to receive the nominee's testimony. Typically, the hearing is held approximately 40 days after the nomination is first made.

Senators ask questions in multiple sessions spanning four or five days, with the option to hold additional hearings for controversial nominees.

3 Final report from the committee

Approximately one week after the hearing, the committee meets in an open session to determine its recommendation for the Senate.

Depending on how the members vote, the nominee may be reported "favorably" or "unfavorably." Regardless of the outcome, the committee typically allows the nomination to move to a full Senate vote.

4 Majority leader sets schedule for debate

Typically, the majority leader consults with the minority leader to determine the timing and length of the proceedings, so that the process can begin via unanimous consent.

If unanimous consent cannot be secured, the majority leader can make a filibuster-proof motion to begin the process.

5 Senators debate on the floor

Unless the minority party agrees to a shorter schedule, the nomination will be debated for a minimum of 30 hours on the Senate floor.

Each senator who takes the floor gives a speech explaining why they are voting to confirm or reject.

6 Full Senate vote for confirmation

Once debate ends, senators may vote on the nominee. Since 1967, every Senate vote to confirm a Supreme Court justice has been a roll call vote — meaning each senator's vote is formally recorded. Historically, most confirmation votes have resulted in an overwhelming majority in favor. However, in recent years, party-line votes with a substantial minority voting to reject have become more common.

Number of votes against nominees

Nominee	Year	Votes
Bork	1987	58
Kavanaugh	2018	48
Thomas	1991	48
Gorsuch	2017	45
Alito	2006	42
Kagan	2010	37
Rehnquist	1986	33
Sotomayor	2009	31
Souter	1990	9
Breyer	1994	9
Ginsburg	1993	3
O'Connor	1981	0
Scalia	1986	0
Kennedy	1988	0