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INSIGHT

President's Selection of a Supreme Court Nominee: The Nomination of Judge Ketanji Brown Jackson in Historical Context

March 8, 2022

This Insight provides historical information related to the selection of past Supreme Court nominees, as well as information about the recent selection of Judge Ketanji Brown Jackson to fill the anticipated vacancy created by Justice Stephen Breyer's announcement that he would retire at the end of the Court's current term (assuming his successor is nominated and confirmed by then). For additional information related to a President's selection of a Supreme Court nominee, such as the criteria used to select a Supreme Court nominee, see CRS Report R44235. The information below is provided for comparative purposes and does not presume the outcome of Judge Jackson's nomination.

Days Elapsed Until a Nominee Was Announced

Figure 1 shows, for vacancies on the Supreme Court from 1975 to 2020, the number of days that elapsed between the date on which it was publicly known that a Justice was leaving the Court (due to retirement or death) and the date when a President publicly announced a nominee to replace the departing Justice. Because, during this period, a President's initial publicly announced choice to fill a vacancy was typically confirmed by the Senate, the figure shows only past vacancies on the Court for which multiple nominations were not required to fill the vacancy. For information about the three vacancies since 1975 that had multiple nominations prior to being filled (i.e., the vacancies created by the departures of Justices Powell, O'Connor, and Scalia), see CRS Report R44235.

For the 13 vacancies included in **Figure 1** (excluding the anticipated Breyer vacancy), approximately 19 days, on average, elapsed between the date on which it was publicly known that a Justice was leaving the Court and the date on which the President publicly identified a nominee for the vacancy. For the same 13 vacancies, the median length of time between the two dates was 12 days.

Most recently, President Biden announced his intent to nominate Judge Jackson on February 25, 2022—29 days after Justice Breyer's announcement on January 27, 2022.

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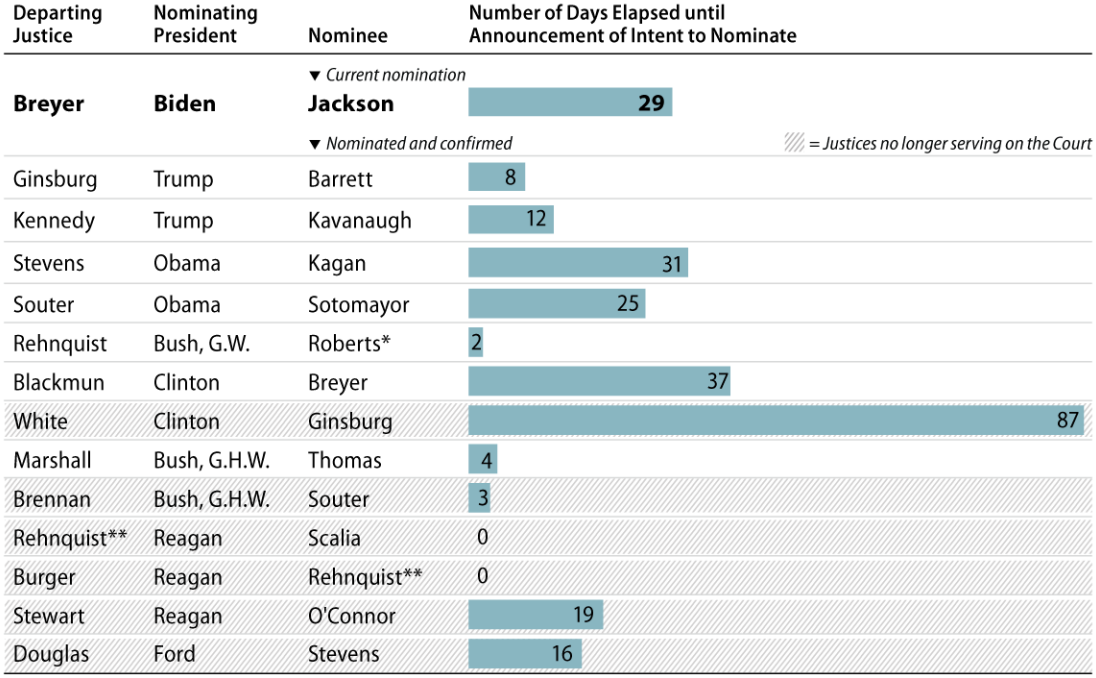
Figure 1. Number of Days from Vacancy Announcement of Departing Justice to President's Public Announcement Identifying Nominee for Vacancy

(Jackson nomination compared to vacancies since 1975 that required only one nomination prior to being filled)



* John G. Roberts Jr. was initially nominated to the judgeship being vacated by Justice Sandra Day O'Connor. President G.W. Bush nominated Mr. Roberts **18 days** after Justice O'Connor submitted her retirement letter to the President. Following the death of Chief Justice William Rehnquist, the Roberts nomination was withdrawn by President Bush and Mr. Roberts was subsequently renominated by President Bush to replace Chief Justice Rehnquist. Mr. Roberts was renominated **2 days** after Chief Justice Rehnquist's death.

** William Rehnquist, who was already serving on the Court as an Associate Justice, was nominated by President Reagan to serve as the new Chief Justice once Chief Justice Burger stepped down from the Court. Justice Rehnquist's elevation to the Chief Justice position would itself create a vacancy for an Associate Justice, to which Mr. Scalia was nominated.

Source: Congressional Research Service.

Professional Position at Time of Nomination

Supreme Court nominees have typically distinguished themselves in the law as lower court judges, legal scholars, or private practitioners. Some have also served as Members of Congress, federal administrators, or governors. **Figure 2** shows, from 1945 to the present, the type of professional position or office held by an individual at the time of his or her nomination to the Supreme Court. So, for example, at the time of his nomination by President Truman in 1945, Harold H. Burton was serving as a U.S. Senator from Ohio.

Since 1945, the most common type of professional experience at the time of nomination to the Supreme Court has been service as a federal appellate court judge. Specifically, 26, or 65%, of 40 nominees were serving as a U.S. circuit court judge when nominated to the Court—including the most recent nominee, Judge Jackson.

The percentage of nominees serving as U.S. appellate court judges at the time of nomination is even greater during relatively more recent presidencies. From 1981 to the present, for example, 16 (or 84%) of 19 nominees were serving as U.S. circuit court judges at the time of nomination.

Figure 2. Type of Professional Experience of U.S. Supreme Court Nominees at Time of Nomination

(1945-Present)

Nominating President	Nominee	Year Nominated	Professional Experience at Time of Nomination: U.S. Circuit Court Judge	State Judge	Exec. Branch Official	Private Practice	Governor	Senator
Biden	**Jackson**	**2022^**	●	○	○	○	○	○
Trump	Barrett	2020	●	○	○	○	○	○
Trump	Kavanaugh	2018	●	○	○	○	○	○
Trump	Gorsuch	2017	●	○	○	○	○	○
Obama	Garland*	2016	●	○	○	○	○	○
Obama	Kagan	2010	○	○	●	○	○	○
Obama	Sotomayor	2009	●	○	○	○	○	○
Bush, G.W.	Alito	2005	●	○	○	○	○	○
Bush, G.W.	Miers*	2005	○	○	●	○	○	○
Bush, G.W.	Roberts	2005	●	○	○	○	○	○
Clinton	Breyer	1994	●	○	○	○	○	○
Clinton	Ginsburg	1993	●	○	○	○	○	○
Bush, G.H.W.	Thomas	1991	●	○	○	○	○	○
Bush, G.H.W.	Souter	1990	●	○	○	○	○	○
Reagan	Kennedy	1987	●	○	○	○	○	○
Reagan	Ginsburg**	1987	●	○	○	○	○	○
Reagan	Bork*	1987	●	○	○	○	○	○
Reagan	Scalia	1986	●	○	○	○	○	○
Reagan	O'Connor	1981	○	●	○	○	○	○
Ford	Stevens	1975	●	○	○	○	○	○
Nixon	Rehnquist	1971	○	○	●	○	○	○
Nixon	Powell	1971	○	○	○	●	○	○
Nixon	Blackmun	1970	●	○	○	○	○	○
Nixon	Carswell*	1970	●	○	○	○	○	○
Nixon	Haynsworth*	1969	●	○	○	○	○	○
Nixon	Burger	1969	●	○	○	○	○	○
Johnson	Thornberry*	1968	●	○	○	○	○	○
Johnson	Marshall	1967	○	○	●	○	○	○
Johnson	Fortas	1965	○	○	○	●	○	○
Kennedy	White	1962	○	○	●	○	○	○
Kennedy	Goldberg	1962	○	○	●	○	○	○
Eisenhower	Stewart***	1959	●	○	○	○	○	○
Eisenhower	Whittaker	1957	●	○	○	○	○	○
Eisenhower	Brennan***	1957	○	●	○	○	○	○
Eisenhower	Harlan	1955	●	○	○	○	○	○
Eisenhower	Warren***	1954	○	○	○	○	●	○
Truman	Minton	1949	●	○	○	○	○	○
Truman	Clark	1949	○	○	●	○	○	○
Truman	Vinson	1946	○	○	●	○	○	○
Truman	Burton	1945	○	○	○	○	○	●

^ President Biden announced intent to nominate on February 25, 2022.
* Nomination returned to or withdrawn by the President or rejected by the Senate.
** President announced intention to nominate but did not formally submit nomination to Senate.
*** Received recess appointment to the Court during the preceding calendar year. The year listed is the year in which the nomination was approved by the Senate.

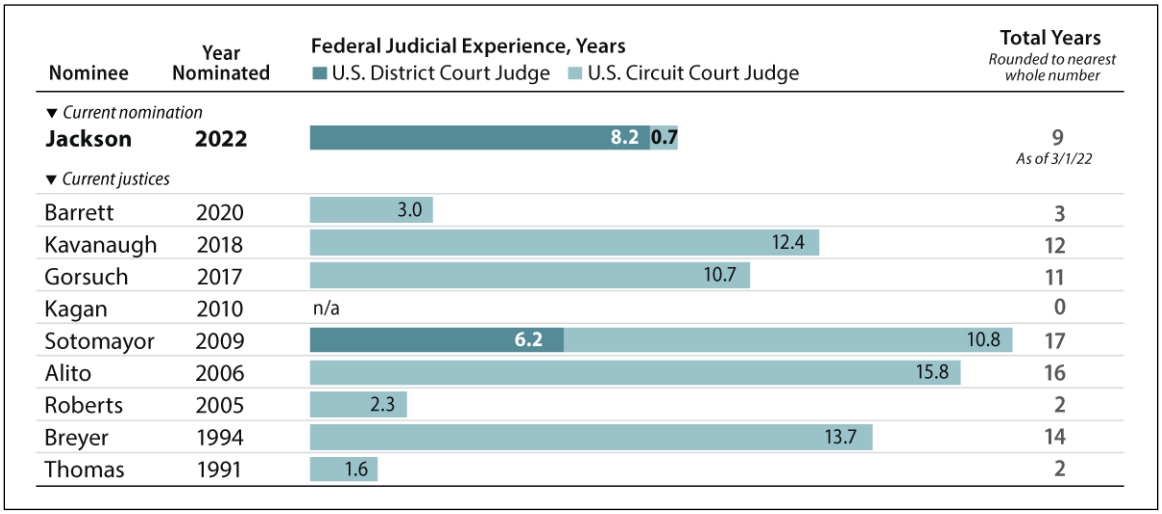
Source: Congressional Research Service.

Since 1945, the next most common type of professional experience at the time of nomination is service as an official in the executive branch—accounting for 8, or 20%, of 40 nominees. Overall, at least since 1945, it has been relatively rare for a nominee, at the time of his or her nomination, to be serving as a state judge, working as an attorney in private practice, or holding elective office—6, or 15%, of 40 nominees fall into one of these three categories.

Prior Judicial Experience

Figure 3 shows, for the nine current Justices on the Supreme Court, the number of years of prior federal judicial experience, if applicable, each had as a U.S. district and/or circuit court judge (as well as the total number of years of such experience considering both positions). The figure also shows this information for Judge Jackson.

Figure 3. Number of Years of Prior Federal Judicial Experience Prior to Appointment to the Supreme Court



Source: Congressional Research Service.

For the nine current Justices, the average length of prior federal judicial experience at the time of appointment to the Court was approximately nine years (with a median of 11 years). Additionally, of the nine, one, Justice Kagan did not serve as a lower federal court judge prior to being appointed to the Court. Of the eight Justices with prior federal judicial experience, Justice Thomas served the fewest number of years, whereas Justice Sotomayor served the greatest number. At present, Justice Sotomayor is also the only Justice with prior experience as both a circuit and district court judge.

Judge Jackson, as of March 1, 2022, has nearly nine years of prior federal judicial experience—which is more total years of prior federal judicial experience than four current members of the Court and fewer total years of such experience than five current members. Most of her prior federal judicial experience has been as a district court judge (which was also the case with several past Justices no longer on the Court, e.g., Justice Whittaker). If confirmed, she would also be one of two members of the current Court with experience as both a circuit and district court judge.

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