

A Primer on the Appointment Process for Supreme Court Nominees

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Article II, Section 2, clause 2 of the United States Constitution states that the president “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint [...] Judges of the supreme Court.” Although it is not required by the Constitution, a nominee for the Supreme Court of the United States (SCOTUS) must first face the Senate Judiciary Committee before being considered by the full Senate for a final confirmation vote. Since the 1960’s, SCOTUS nominees have typically followed a three-step process through the Judiciary Committee: a pre-hearing investigation, a public nomination hearing, and a vote by the Committee.

During the pre-hearing investigation, the nominee will provide the Senate with biographical, professional, and financial information. The nominee also meets with individual senators on Capitol Hill to discuss issues that are important to those senators. Additionally, the FBI investigates the nominee and provides the Committee with reports of its findings.

After the investigations and meetings with senators are complete, the Committee holds public hearings on the nominee. Hearings, on average, last four to five days. During the hearings, senators ask questions of the nominee, witnesses testify to the nominee’s professional experience, and advocacy groups may testify about the nominee’s positions or record. After the hearings are complete, the Committee takes action on the nominee. They can report the nominee to the full Senate favorably, unfavorably, or with no recommendation. Even if the Committee reports the nominee unfavorably or with no recommendation, the full Senate may still decide to consider the nominee anyway.

After the Judiciary Committee has completed its process, the full Senate has an opportunity to debate the merits of the nominee before a final confirmation vote. Historically, the majority leader of the Senate has worked with the minority leader and other senators to obtain a unanimous consent agreement to determine when consideration of the nominee will begin. This unanimous consent agreement may also include how long the Senate has to debate over the nominee. If a unanimous consent agreement is not reached or agreed to, the majority leader may unilaterally motion to begin consideration of the nominee.

If no time agreement is reached, the Senate has an unlimited amount of time to debate over the nominee. Those opposing the nomination may attempt to delay the final vote on the nominee through use of Senate procedure. However, supporters of the nominee may choose to invoke cloture, which would put a time limit on the remaining debate. In order to invoke cloture for

Supreme Court nominees a majority of senators are required to vote in favor of it. After invoking cloture, further debate is limited to 30 hours, ensuring that the nominee will receive a final vote. At the end of the debate, a roll call vote is held on the nominee. If the Senate confirms a nominee, then the secretary of the Senate transmits a resolution of confirmation to the White House and the president signs a commission, officially confirming the nominee to the Court.

For more information, read reports from the Congressional Research Service on how the [Senate Judiciary Committee](#) and the [full Senate](#) consider and vote on Supreme Court nominees. You can also visit the Senate website's page on the [federal judiciary](#) and [history of its nomination powers](#).