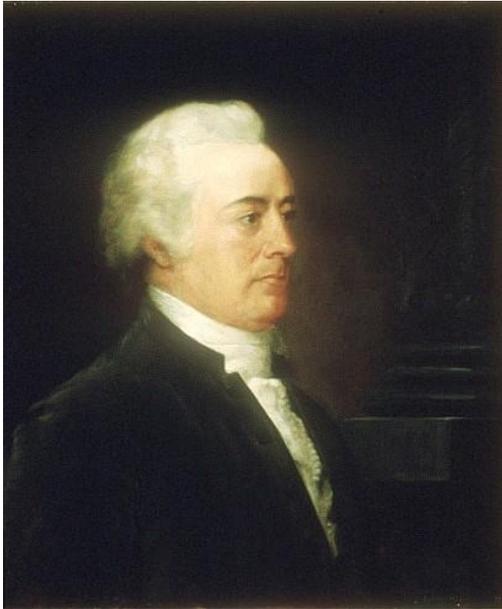


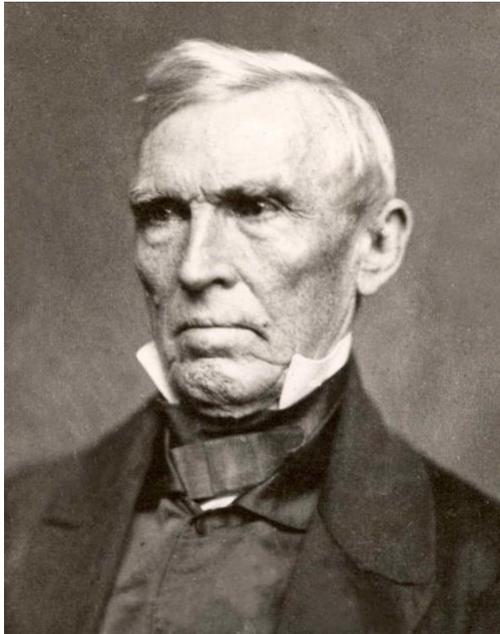
Controversial Supreme Court Nominations

Written by Edward M. Kennedy Institute for the United States Senate staff

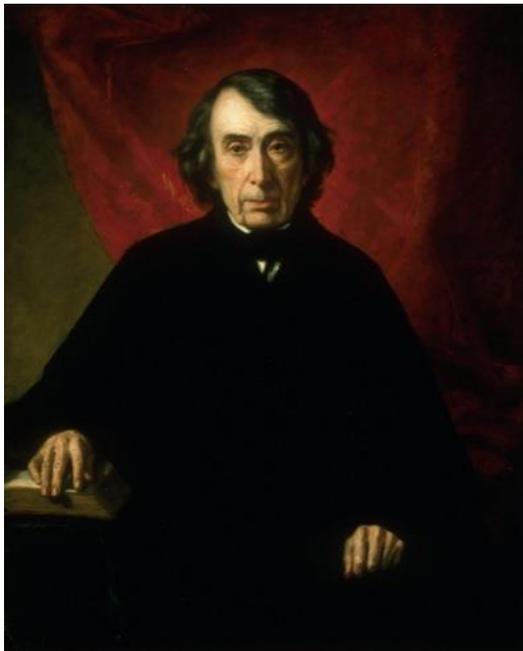
Since 1789, 163 individuals have been nominated to serve on the Supreme Court, 126 of whom (over 77%) have been confirmed by the Senate. Despite this high confirmation rate, Supreme Court nominations can still be highly controversial, as has been seen with each of President Trump's nominees —Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett — albeit for very different reasons. Controversial Supreme Court nominations are not new. Court controversies, rejections, and so-called “stolen seats” date back to the 1800's. Here are a few examples of some of the more controversial Supreme Court nominations in American history.



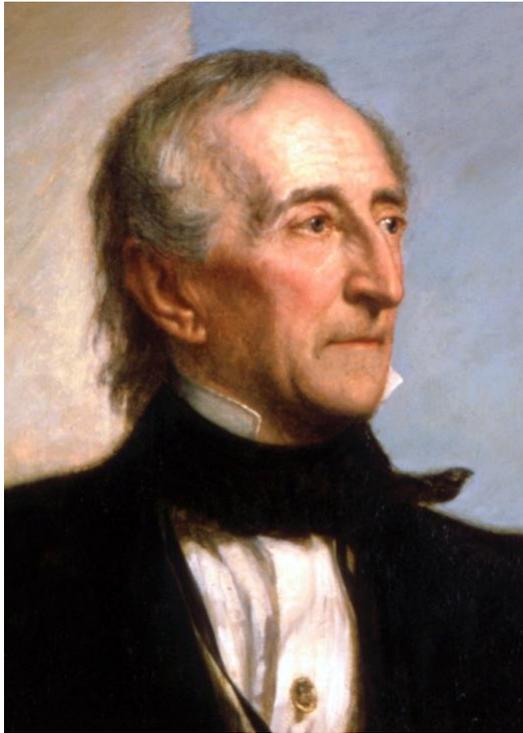
George Washington nominated John Rutledge (pictured) to succeed Chief Justice John Jay after the latter retired in 1795. While Rutledge had previously served on the Court as an Associate Justice, support for his confirmation as chief justice faded quickly after he reportedly stated in a speech that he would rather see Washington dead than see him sign the pending Jay Treaty, which resolved outstanding issues between the United States and Great Britain following the end of the American Revolution. Senators who supported the Jay Treaty successfully rejected Rutledge's nomination. Rutledge became so despondent following his rejection that he attempted suicide in South Carolina by jumping into Charleston Harbor, but was rescued by two slaves who saw him drowning.



In what some consider to be the first example of a “stolen seat,” lame duck President John Quincy Adams nominated John Crittenden (pictured) to the Supreme Court in 1828 after losing the presidential election to Andrew Jackson. Jackson’s supporters in the Senate successfully postponed a vote on Crittenden so that Jackson could name his own replacement after taking office, which he did.



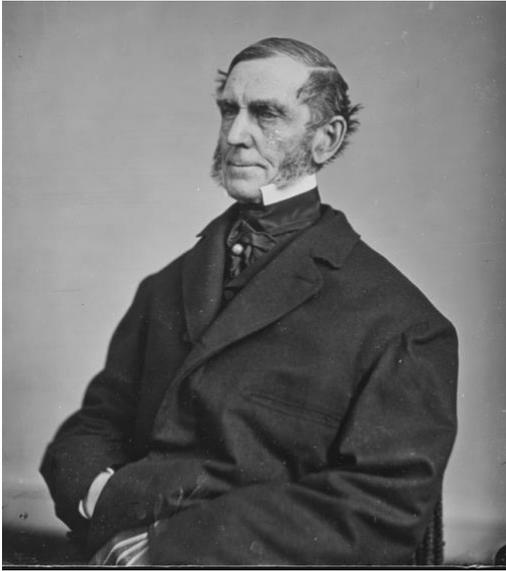
Andrew Jackson first nominated Roger Taney (pictured) to the Supreme Court in early 1835, but (as happened to Crittenden) political opponents succeeded in preventing the Senate from holding a vote on him before the end of the congressional session. Undeterred, Jackson would renominate Taney in late 1835 to replace Chief Justice John Marshall after he died. This time, Taney was confirmed, making him the first Catholic to serve on the Supreme Court. As Chief Justice, Taney would pen the majority opinion in the notorious *Dred Scott* case, in which the Court declared that African Americans were not and could not become citizens and that the Missouri Compromise (which attempted to limit the spread of slavery into western territories) was unconstitutional.



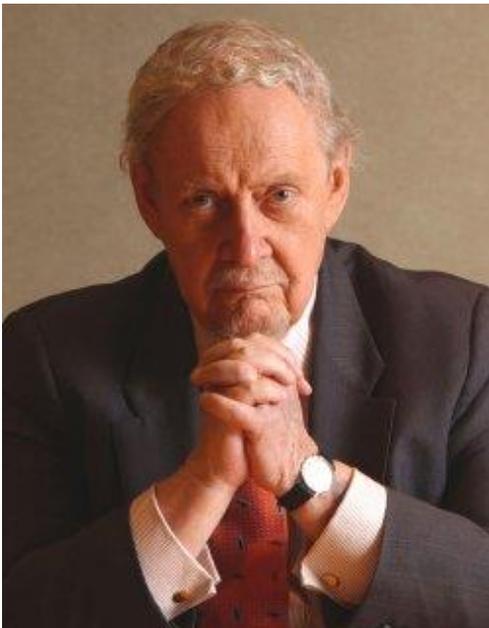
John Tyler (pictured) was the first vice president to assume the presidency following the death of William Henry Harrison. Tyler had two Supreme Court vacancies to fill, but his remarkable unpopularity among senators made things difficult. He made nine nominations of five different men to fill the two vacancies, but only one was ultimately confirmed by the Senate.



Millard Fillmore (pictured) attempted to fill a Supreme Court seat in 1852 (a presidential election year) after failing to win renomination from his own party for a second term in office. His status as a lame duck president, coupled with his muddled reputation and countless political enemies, rendered his efforts to fill the seat pointless. The Senate refused to vote on each of the three men Fillmore nominated.



Three months after President Andrew Johnson nominated Henry Stanberry (pictured) in 1866, Congress effectively blocked the nomination by voting to shrink the size of the Supreme Court from ten justices to seven. Historians disagree over whether Congress's decision was in retaliation for Johnson's vetoing civil rights bills or simply to fix perceived problems with the Court. Congress's subsequent actions suggest the former explanation. Less than three years after shrinking the Court, Congress voted to increase the size of the Court to nine, allowing Ulysses S. Grant (who succeeded Johnson as president) to appoint two new justices.



President Ronald Reagan's nomination of Robert Bork (pictured) in 1987 was controversial from the beginning. There was concern over Bork's judicial philosophy as well as his position on civil and voting rights, executive authority, and abortion. Speeches and television ads painted Bork as an ideological extremist and fueled public skepticism of his nomination. Bork's confirmation hearings were broadcast live and were intensely partisan. The Senate Judiciary Committee recommended that Bork's nomination be rejected by the full Senate, which it ultimately was in the end. The reaction to and treatment of Bork was so infamous that his last name has since become a verb to describe efforts to vilify a nominee for public office in order to prevent them from holding that office.



George W. Bush nominated White House Counsel Harriet Miers (pictured) to the Supreme Court in 2005 after Sandra Day O'Connor retired. Bush's choice proved problematic for several reasons. Not only did Miers have no judicial experience, but both Republicans and Democrats questioned her close relationship to the president. Furthermore, many lawmakers did not know where she stood on a variety of issues. Most importantly for Republicans seeking to overturn *Roe v. Wade*, they did not know her stance on abortion. Miers's nomination was withdrawn and replaced by Samuel Alito, whom the Senate confirmed to fill the seat.

For more information on the history of controversial Supreme Court nominations, read stories from the [Smithsonian Magazine](#) and [WBUR](#).