

# CRS Report for Congress

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## Votes Other Than Favorably on Judicial Nominations, 1939-2003

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### Summary

Judicial nominations are submitted to the Senate by the President. Once a nomination is submitted, the Senate refers it to the Judiciary Committee. Either the Senate or the Senate Judiciary Committee may choose not to act when considering the nomination. If the Judiciary Committee does act and schedules a vote on a nominee, any of four motions can be made. In most instances, the motion is made to report favorably. The committee could also vote on a motion to table the nomination, to report the nomination without recommendation, or to report the nomination unfavorably. The nomination moves on to the full Senate if the committee votes to report it favorably, to report it without recommendation, or to report it unfavorably. A nomination that is tabled is effectively killed. The Senate may choose to vote on a judicial nomination at anytime. If the Senate does vote on the nominee, it may vote to confirm, reject, table, or recommit. A vote to recommit will send the nomination back to committee. After a vote to reject, the Secretary of the Senate will attest to a resolution of disapproval and transmit it to the President. In the case of a vote to table, the nomination will be returned to the President by the Secretary of the Senate at the end of the session.

This report identifies 19 instances in which the Senate or the Senate Judiciary Committee voted to reject, table, or report other than favorably on district or circuit court judicial nominations in the 64 years from 1939 through 2003. Out of those 19 judicial nominations that received a vote other than favorably, two were eventually confirmed. Judicial nominations that did not receive Senate or committee action are not counted and thus are not included in the report. Senate and Senate Judiciary Committee actions on judicial nominations are discussed more generally in CRS Report RL31635, *Judicial Nomination Statistics: U.S. District and Circuit Courts, 1977-2003*, by Denis Steven Rutkus and Mitchel A. Sollenberger. This report will be updated if the Senate or the Senate Judiciary Committee votes other than favorably on another judicial nomination.

Although the Senate historically has confirmed the majority of the thousands of U.S. circuit court and district court nominations submitted to it, some nominations do not

receive Senate confirmation.<sup>1</sup> It is important to note that at each step in the confirmation process, it is possible that a judicial nomination will see no further action. Neither the Judiciary Committee nor the full Senate is compelled to act on the nomination, and nominations that receive no action are eventually returned to the President.

Once the President submits a judicial nomination to the Senate, it is referred to the Judiciary Committee. In the next step in the confirmation process, the nominee may receive a committee hearing. The chair then may schedule a committee meeting to vote on the nomination or decide to take no further action. In most instances, the committee votes to report nominations favorably, but in a small number of cases, the committee has voted to report other than favorably. The committee can vote to table the nomination, to report the nomination without recommendation, or to report the nomination unfavorably. The nomination moves to the full Senate if a majority of the committee agrees to any one of the motions to report.<sup>2</sup> A nomination fails to reach the Senate floor on a tie vote and is considered rejected.

The Senate typically votes on nominations reported out of the Judiciary Committee. The Senate may vote to confirm, vote to reject, vote to recommit, or vote to table, which has the effect of killing the nomination. If the Senate rejects the nomination, it is returned to the President with a resolution of disapproval.<sup>3</sup> In the case of a vote to table, the nomination is returned to the President by the Secretary of the Senate at the end of the session. A vote to recommit will send the nominee back to committee. If a judicial nomination does not receive a Senate vote, the nomination ultimately will either be withdrawn by the President or returned to the President by the Secretary of the Senate upon a Senate adjournment or recess of more than 30 days.

This report identifies 19 instances from the 76<sup>th</sup> Congress to the end of the first session of the 108<sup>th</sup> Congress in which U.S. circuit court and district court nominations either were rejected on the floor of the Senate or received a vote other than to report favorably by the Judiciary Committee.<sup>4</sup> The Senate did not vote to table a nomination during this period. Judicial nominations that did not receive Senate or committee action are not considered and therefore are not included in the report. Attached is a table identifying instances in which the Senate voted to reject a judicial nomination or the Judiciary Committee voted to:

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<sup>1</sup> For statistics on the number of confirmations during the 1945-2003 time period, see CRS Report RL32122, *Judicial Nomination Statistics: U.S. District and Circuit Courts, 1945-1976*, by Mitchel A. Sollenberger; and CRS Report RL31635, *Judicial Nomination Statistics: U.S. District and Circuit Courts, 1977-2003*, by Denis Steven Rutkus and Mitchel A. Sollenberger. For information on judicial nominations from 1939 to 1945, see biographies of federal judges at the Federal Judicial Center website (<http://www.fjc.gov/newweb/jnetweb.nsf/hisj>), visited Feb. 9, 2004.

<sup>2</sup> If a motion to table the nomination succeeds, or if the committee decides not to report, the nomination remains in committee.

<sup>3</sup> According to Senate Rule XXXI, rejected nominations “shall not be returned by the Secretary to the President until the expiration of the time limit for making a motion to reconsider,” which is three days after the confirmation vote is held.

<sup>4</sup> The 76<sup>th</sup> Congress was the earliest in which Judiciary Committee votes could be found in the *Congressional Record* or the *Senate Committee on the Judiciary Legislative Calendar*.

- table a nomination;
- reject a motion to report favorably;
- reject a motion to report without recommendation;
- approve a motion to report without recommendation;
- reject a motion to report unfavorably; or
- approve a motion to report unfavorably (i.e., reporting adversely).

The table is arranged chronologically by the Congress in which each nomination was received in the Senate. From left to right, columns one, two, and three identify the Congress, nominee, and court of each nominee. Columns four through seven provide the Judiciary Committee vote on each nomination, stating the type of vote, vote breakdown, and date of the vote. Column eight provides information concerning what occurred in the Senate after the Judiciary Committee voted. The table lists all 19 circuit court or district court nominations from 1939 through 2003 that were rejected by the Senate or that received a vote other than to report favorably by the Judiciary Committee. One nomination is still pending before the Senate.

Senatorial courtesy was the reason for rejection in six of the first seven cases of Judiciary Committee votes on judicial nominations that were other than to report favorably.<sup>5</sup> Floyd H. Roberts, nominated to be U.S. district court judge for western Virginia, was the first judicial nominee reported unfavorably by the committee and rejected by the Senate within the 1939-2003 time period. The committee adversely reported Roberts in 1939 on the grounds that his nomination was “personally offensive” to the two Virginia Senators.<sup>6</sup> As was the tradition under senatorial courtesy at that time, Roberts was adversely reported to the Senate, where he was rejected by a vote of 72 to 9. In each of the other five cases in which senatorial courtesy was the stated reason for objecting to a judicial nomination, the opposing Senator stated that the nominee was “personally obnoxious.”<sup>7</sup> In one instance, the nomination was not reported out of committee.<sup>8</sup> The other four nominations were reported adversely and rejected by voice vote in the Senate.<sup>9</sup> The remaining 13 nominees received either political, ideological, or professional opposition.

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<sup>5</sup> The *American Congressional Dictionary* defines senatorial courtesy as “[t]he Senate’s practice of declining to confirm a presidential nominee for an office in the state of a senator of the president’s party unless that senator approves. Sometimes called ‘the courtesy of the Senate,’ the practice is a customary one and not always adhered to. A senator sometimes invokes the custom by declaring that the nominee is personally obnoxious or personally objectionable to him.” See Walter Kravitz, *Congressional Quarterly’s American Congressional Dictionary* (Washington: CQ Press, 2001), p. 231.

<sup>6</sup> National Archives and Records Administration, Record Group 46, Records of the U.S. Senate, 76<sup>th</sup> Cong., Records of Executive Proceedings, Nomination Files, Judiciary Committee, Hearings on Nomination of Floyd H. Roberts (1939), p. 84.

<sup>7</sup> The nominees were James V. Allred, M. Neil Andrews, Carroll D. Switzer, Joseph Drucker, and Cornelius J. Harrington.

<sup>8</sup> National Archives and Records Administration, Record Group 46, Records of the U.S. Senate, 78<sup>th</sup> Cong., Records of Executive Proceedings, Nomination Files, Judiciary Committee, James V. Allred, Blue Slip (1943); and Hearings on Nomination of James V. Allred (1943), pp. 5-7.

<sup>9</sup> See *Congressional Record*, 81<sup>st</sup> Cong., 2<sup>nd</sup> sess., Aug. 9, 1950, pp. 12104-12106; and *Congressional Record*, 82<sup>nd</sup> Cong., 1<sup>st</sup> sess., Oct. 9, 1951, pp. 12838-12840.

### Votes Other Than Favorably on Judicial Nominations, 1939- 2003

(1) Congress	(2) Nominee	(3) Court	Judiciary Committee Motion				(8) Final Outcome
			(4) Table	(5) Report Favorably	(6) Report Without Recommendation	(7) Report Unfavorably	
76 <sup>th</sup>	Floyd H. Roberts	U.S. District Court, Western Virginia	—	3-14, 02/01/39 <sup>a</sup>	—	14-3, 02/01/39 <sup>b</sup>	Rejected, 72-9, 02/06/39
78 <sup>th</sup>	James V. Allred	U.S. Circuit Court of Appeals, Fifth Circuit	—	9-9, 03/22/43 <sup>c</sup>	—	—	Returned, 07/08/43
79 <sup>th</sup>	Nathan Ross Margold	U.S. District Court for the District of Columbia	—	6-6, 07/30/45 <sup>d</sup>	—	—	Returned, 08/01/45
81 <sup>st</sup>	M. Neil Andrews	U.S. District Court, Northern Georgia	—	1-9, 07/31/50 <sup>e</sup>	—	9-1, 07/31/50 <sup>f</sup>	Rejected, voice vote, 08/09/50
81 <sup>st</sup>	Carroll D. Switzer	U.S. District Court, Southern Iowa	—	0-10, 07/31/50 <sup>g</sup>	—	10-0, 07/31/50 <sup>h</sup>	Rejected, voice vote, 08/09/50
82 <sup>nd</sup>	Joseph Drucker	U.S. District Court, Northern Illinois	—	Defeated, 09/17/51 <sup>i</sup>	—	10/08/51 <sup>i</sup>	Rejected, voice vote, 10/09/51
82 <sup>nd</sup>	Cornelius J. Harrington	U.S. District Court, Northern Illinois	—	Defeated, 09/17/51 <sup>j</sup>	—	10/08/51 <sup>j</sup>	Rejected, voice vote, 10/09/51
94 <sup>th</sup>	William B. Poff	U.S. District Court, Western Virginia	9-0, 05/05/76 <sup>k</sup>	—	—	—	Withdrawn, 06/07/76
95 <sup>th</sup>	Robert F. Collins	U.S. District Court, Eastern Louisiana	—	5-5, 04/14/78 <sup>l</sup>	—	—	Confirmed, voice vote, 05/17/78
				13-1, 05/16/78 <sup>l</sup>			
96 <sup>th</sup>	Charles B. Winberry, Jr.	U.S. District Court, North Carolina	—	6-8, 03/04/80 <sup>m</sup>	—	—	Withdrawn, 08/06/80
99 <sup>th</sup>	Daniel A. Manion	U.S. Court of Appeals, Seventh Circuit	—	9-9, 05/08/86 <sup>n</sup>	11-6, 05/08/86 <sup>n</sup>	—	Confirmed, 48-46, 06/26/86
99 <sup>th</sup>	Jefferson B. Sessions	U.S. District Court, Southern Alabama	—	8-10, 06/05/86 <sup>o</sup>	9-9, 06/05/86 <sup>o</sup>	—	Returned, 12/20/85

(1) Congress	(2) Nominee	(3) Court	Judiciary Committee Motion				(8) Final Outcome
			(4) Table	(5) Report Favorably	(6) Report Without Recommendation	(7) Report Unfavorably	
100 <sup>th</sup>	Susan W. Liebeler	U.S. Court of Appeals, Federal Circuit	—	6-7, 02/23/88 <sup>p</sup>	8-5, 02/23/88 <sup>p</sup>	—	Returned, 10/22/88
100 <sup>th</sup>	Bernard H. Siegan	U.S. Court of Appeals, Ninth Circuit	—	6-8, 07/14/88 <sup>q</sup>	7-7, 07/14/88 <sup>q</sup>	—	Withdrawn, 09/16/88
102 <sup>nd</sup>	Kenneth L. Ryskamp	U.S. Court of Appeals, Eleventh Circuit	—	6-8, 04/11/91 <sup>r</sup>	7-7, 04/11/91 <sup>r</sup>	—	Returned, 08/02/91
106 <sup>th</sup>	Ronnie White	U.S. District Court, Eastern Missouri	—	12-6, 07/22/99 <sup>s</sup>	—	—	Rejected, 45-54, 10/05/99 <sup>t</sup>
107 <sup>th</sup>	Charles W. Pickering, Sr.	U.S. Court of Appeals, Fifth Circuit	—	9-10, 03/14/02 <sup>u</sup>	9-10, 03/14/02 <sup>u</sup>	9-10, 03/14/02 <sup>u</sup>	Returned, 11/20/02
107 <sup>th</sup>	Priscilla Owen	U.S. Court of Appeals, Fifth Circuit	—	9-10, 09/05/02 <sup>v</sup>	9-10, 09/05/02 <sup>v</sup>	9-10, 09/05/02 <sup>v</sup>	Returned, 11/20/02
108 <sup>th</sup>	J. Leon Holmes	U.S. District Court, Eastern Arkansas	—	—	10-9, 05/01/03 <sup>w</sup>	—	Pending

**Sources:** The *Journal of the Executive Proceedings of the Senate of the United States* from the 76<sup>th</sup> and 77<sup>th</sup> Congresses, the final committee calendars of the 78<sup>th</sup> to 106<sup>th</sup> Congresses, and the daily editions of the *Congressional Record* for the 107<sup>th</sup> and 108<sup>th</sup> Congresses. Various newspaper articles were also used.

a. Roberts — *Congressional Record*, 80<sup>th</sup> Cong., 1<sup>st</sup> sess., July 1, 1947, p. 7990.

b. Roberts — *Ibid.*

c. Allred — *Legislative and Executive Calendar*, Committee on the Judiciary, 78<sup>th</sup> Cong., 1<sup>st</sup> sess., p. 5.

d. Margold — *Legislative and Executive Calendar*, Committee on the Judiciary, 79<sup>th</sup> Cong., 1<sup>st</sup> sess., p. 86. For information concerning the reasons for the committee vote, see Local Section, “Judge Margold Dies at 48; Funeral Will Be Held Today,” *Washington Post*, Dec. 17, 1947, p. B2.

e. Andrews — Neither the *Legislative and Executive Calendar* nor the Judiciary Committee nor the *Congressional Record* reports a vote total for Andrews. See *Legislative and Executive Calendar*, Committee on the Judiciary, 81<sup>st</sup> Cong., 2<sup>nd</sup> sess., p. 454.

f. Andrews — The *Legislative and Executive Calendar* notes that Chairman Pat McCarran reported Andrews out of committee adversely. CRS assumes that the final committee vote was for a motion to report unfavorably. For information concerning the committee vote, see “4 Truman Choices Rejected Sharply In Senate Rebuffs,” *The New York Times*, Aug. 10, 1950, p. 1.

g. Switzer — Neither the *Legislative and Executive Calendar* nor the Judiciary Committee nor the *Congressional Record* reports a vote total for Switzer. See *Legislative and Executive Calendar*, Committee on the Judiciary, 81<sup>st</sup> Cong., 2<sup>nd</sup> sess., p. 454.

h. Switzer — The *Legislative and Executive Calendar* notes that Chairman Pat McCarran reported Switzer out of committee adversely. CRS assumes that the final committee vote was for a motion to report unfavorably. For information concerning the committee vote, see “4 Truman Choices Rejected Sharply In Senate Rebuffs,” *The New York Times*, Aug. 10, 1950, p. 1.

- i. Drucker — The *Legislative and Executive Calendar* notes that on Sept. 17, 1951, a motion to report favorably was defeated and that a motion to report unfavorably was also defeated; however, on Oct. 8, 1951, the calendar notes that the committee disapproved Drucker’s nomination but then reported him out on the same day. This third vote, although not stated in the calendar, tends to suggest that the committee considered a second motion to report unfavorably. See *Legislative and Executive Calendar*, Committee on the Judiciary, 82<sup>nd</sup> Cong., 1<sup>st</sup> sess., p. 553.
- j. Harrington — The *Legislative and Executive Calendar* notes that on Sept. 17, 1951, a motion to report favorably was defeated and that a motion to report unfavorably was also defeated; however, on Oct. 8, 1951, the calendar notes that the committee disapproved Harrington’s nomination but then reported him out on the same day. This third vote, although not stated in the calendar, tends to suggest that the committee considered a second motion to report unfavorably. See *Legislative and Executive Calendar*, Committee on the Judiciary, 82<sup>nd</sup> Cong., 1<sup>st</sup> sess., p. 553.
- k. Poff — *Legislative and Executive Calendar*, Committee on the Judiciary, 94<sup>th</sup> Cong., 2<sup>nd</sup> sess., p. 247. For more information concerning the committee vote, see *Congressional Quarterly*, *Inside Congress*, “‘Senatorial Courtesy’ Derails Ford Judgeship Nomination,” *Congressional Quarterly*, May 8, 1976, p. 1124.
- l. Collins — *Legislative and Executive Calendar*, Committee on the Judiciary, 95<sup>th</sup> Cong., 2<sup>nd</sup> sess., p. 212.
- m. Winberry — *Legislative and Executive Calendar*, Committee on the Judiciary, 96<sup>th</sup> Cong., 1<sup>st</sup> sess., p. 206.
- n. Manion — *Legislative and Executive Calendar*, Committee on the Judiciary, 99<sup>th</sup> Cong., 2<sup>nd</sup> sess., p. 261. For information concerning the committee vote, see Eric Effron, “Setback for Manion,” *The National Law Journal*, May 19, 1986, p. 2.
- o. Sessions — *Legislative and Executive Calendar*, Committee on the Judiciary, 99<sup>th</sup> Cong., 2<sup>nd</sup> sess., p. 272. For information concerning the committee vote, see David Price, “Heflin Votes Crucial in Defeat of Denton-Backed Judicial Nomination,” *The Associated Press*, June 6, 1986.
- p. Liebler — *Legislative and Executive Calendar*, Committee on the Judiciary, 100<sup>th</sup> Cong., 2<sup>nd</sup> sess., p. 192. For information concerning the committee vote, see Christopher Ladd and Terence Moran, “Nominees Liebler, Siegan Still Have Long Way to Go,” *Legal Times*, Feb. 29, 1988, p. 4.
- q. Siegan — *Legislative and Executive Calendar*, Committee on the Judiciary, 100<sup>th</sup> Cong., 2<sup>nd</sup> sess., p. 193. For information concerning the committee vote, see Linda Greenhouse, “Panel Rejects Court Nominee, Ending Bitter Battle,” *The New York Times*, July 15, 1988, p. A12.
- r. Ryskamp — *Legislative and Executive Calendar*, Committee on the Judiciary, 102<sup>nd</sup> Cong., 1<sup>st</sup> sess., p. 165. For information concerning the committee vote, see Neil A. Lewis, “Committee Rejects Bush Nominee to Key Appellate Court in South,” *The New York Times*, April 12, 1991, p. A1.
- s. White — *Legislative and Executive Calendar*, Committee on the Judiciary, 106<sup>th</sup> Cong., 1<sup>st</sup> sess., p. 152. For information concerning the committee vote, see Sean Scully, “Senate rejects Clinton bench nominee; Black Missouri judge had opposed death penalty; Democrats charge racism,” *The Washington Times*, October 6, 1999, p. A6.
- t. White — *Legislative and Executive Calendar*, Committee on the Judiciary, 106<sup>th</sup> Cong., 1<sup>st</sup> sess., p. 152.
- u. Pickering — As of Feb. 9, 2004, the final committee calendar for the 107<sup>th</sup> Congress had not been published. See Jennifer A. Dlouhy, “Democrats Defeat Pickering on Party-Line Vote,” *CQ Daily Monitor*, March 15, 2002, p. 1.
- v. Owen — As of Feb. 9, 2004, the final committee calendar for the 107<sup>th</sup> Congress had not been published. See Jennifer A. Dlouhy, “Republicans Vow Revenge as Owen Nomination is Defeated,” *CQ Daily Monitor*, Sept. 9, 2002, p. 8.
- w. Holmes — For information concerning the committee vote, see *Congressional Record*, daily edition, vol. 149, May 1, 2003, p. D436.