

Judicial Recess Appointments: A Survey of the Arguments

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This paper considers the President’s power to make recess appointments to the federal judiciary. Part I details the long history of judicial recess appointments. Part II considers the arguments in favor of, and against, the constitutionality of such appointments. Part III discusses the mechanics of recess appointments. And Part IV considers the political advantages and disadvantages of such appointments.

I. THE HISTORY OF JUDICIAL RECESS APPOINTMENTS

The President’s authority to install judges under the Recess Appointments Clause is well established as a matter of historical practice. In fact, Presidents have made more than 300 recess appointments to the federal judiciary.¹

Presidents have used their Recess Appointments power to appoint federal judges since the beginning of the Nation’s history. During recesses of the First Congress, President Washington made three recess appointments to the federal district court. There was no apparent objection by any member of his Cabinet or the Senate, which subsequently confirmed all three for lifetime positions on the bench. President Washington also made two recess appointments to the Supreme Court. Although one of them—Chief Justice John Rutledge—was later denied confirmation for a permanent post, it was not due to objections to the earlier recess appointment.² The first five Presidents made a total of twenty-nine recess appointments of judges.

Fifteen justices of the Supreme Court—including two Chief Justices—were first appointed by recess appointment. Other than Rutledge, all were subsequently confirmed by the Senate for lifetime positions. Recess appointees to the Supreme Court include Chief Justice Earl Warren and Justices Potter Stewart and William Brennan.

The practice of installing judges by recess appointment has fallen into disuse in recent years, however. Until the 1960s, every single President had used the Recess Appointments power to install judges except for two: William Henry Harrison, who died within a month of taking office, and John Tyler, who succeeded to the office upon Harrison’s death. Since the 1969 inauguration of Richard Nixon, there have been only two recess-appointed federal judges—U.S. District Judge Walter M. Heen, installed by President Jimmy Carter and never confirmed by the Senate, and Judge Roger Gregory, recess-appointed to the Fourth Circuit by President Clinton and subsequently confirmed by the Senate to that same court during the Bush Administration.

1. See Appendices A-C.

2. The opposition to Rutledge rested on his outspoken opposition to the Jay Treaty and discredited accusations of “drunkenness, erratic behavior, and refusal to pay debts.” David J. Garrow, *Mental Decrepitude on the U.S. Supreme Court: The Case for a 28th Amendment*, 67 U. CHI. L. REV. 995, 999 (2000) (quoting JAMES HAW, JOHN AND EDWARD RUTLEDGE OF SOUTH CAROLINA 253 (1997)). Rutledge ultimately received a vote in the Senate but was defeated 14-10, after which Thomas Jefferson remarked: “The rejection of Mr. Rutledge by the Senate is a bold thing; because they cannot pretend any objection to him but his disapprobation of the treaty. It is, of course, a declaration that they will receive none but Tories hereafter into any department of the government.” Letter from Thomas Jefferson to William Branch Giles (Dec. 31, 1795), in 9 WRITINGS OF THOMAS JEFFERSON 318 (A. Bergh ed., 1907).

An overwhelming percentage of recess-appointed judges—approximately eighty-five percent by one count—have been subsequently confirmed for lifetime appointments by the Senate.³ President Kennedy, one of the most prolific users of the recess-appointment power, enjoyed the best record, with all twenty-five of his recess appointees subsequently being confirmed. President Eisenhower made twenty-seven recess appointments and lost only one subsequent confirmation. President Truman, the record holder with thirty-nine recess appointments, secured confirmation for thirty-three appointees. President Coolidge won confirmation for twenty-two of twenty-five recess-appointed judges, and President Theodore Roosevelt secured Senate approval of twenty-six of thirty.

Recess appointments have been used for the express purpose of increasing minority and female representation on the federal bench. As the Clinton Administration explained in announcing the December 27, 2000, recess appointment of Roger Gregory to the Fourth Circuit:

This appointment is historic. The Fourth Circuit, which hears appeals from trial courts in Maryland, North Carolina, South Carolina, Virginia, and West Virginia, has the largest African American population of any circuit in this country, yet it has never had an African American appellate judge. . . . Presidents have often exercised their recess powers to make historic appointments to bring diversity to the courts. Four of the five first African American appellate judges were recess appointed to their first Article III position. The recess appointment of Roger Gregory to the United States Court of Appeals for the Fourth Circuit is in this grand tradition.⁴

William Henry Hastie, the first African-American life-tenured federal judge in our Nation's history, was first installed to the Third Circuit as a recess appointee by President Truman in 1949; he was confirmed the next year. Hastie had previously served as a fixed-term judge of the U.S. District Court for the Virgin Islands from 1937 to 1939. Before becoming the first African-American Supreme Court Justice, Thurgood Marshall was appointed to the federal bench as a recess appointee to the Second Circuit in 1961. Even after President Kennedy made the recess appointment, Senate Democrats initially considered blocking the controversial Marshall nomination, through what would have been the first filibuster of a judicial nominee. But the Senate ultimately voted to confirm him, over the opposition of sixteen Democrats. Finally, in 1964, President Lyndon Johnson first installed two other African-American federal judges, Spottswood Robinson and A. Leon Higginbotham, through the use of recess appointments.⁵

3. See Appendix C.

4. *President Clinton Appoints Roger Gregory to the United States Court of Appeals for the Fourth Circuit*, U.S. National Archives & Records Administration, at http://clinton4.nara.gov/WH/new/html/Fri_Dec_29_135529_2000.html (Dec. 27, 2000).

5. In addition, when the Supreme Court re-heard oral arguments in *Brown v. Board of Education*, 347 U.S. 483 (1954), Chief Justice Earl Warren himself was serving on a recess appointment.

Likewise, two of our nation’s first three female federal judges received recess appointments. Burnita Shelton Matthews became the first woman to serve on a U.S. district court when Harry Truman gave her a recess appointment to the district court for the District of Columbia in October 1949. The Senate confirmed her nomination in April 1950. President Kennedy recess-appointed Sarah T. Hughes to the federal district bench in Texas in 1961; she was confirmed the next year.

II. THE CONSTITUTIONALITY OF JUDICIAL RECESS APPOINTMENTS

The preceding section demonstrates that Presidents from Washington to Clinton have made recess appointments to the federal courts. But does the Constitution contemplate such appointments? On the one hand, Article III of the Constitution provides for exercise of the judicial power by judges with life tenure and salary protection—neither of which is enjoyed by recess appointees. On the other hand, Article II affords the President the seemingly unfettered power to make recess appointments, including recess appointments of federal judges. The constitutional question, therefore, is whether the tenure and salary provisions of Article III somehow limit the otherwise unfettered Recess Appointments Clause of Article II.

As a preliminary matter, it seems clear that the President enjoys specific constitutional authority to appoint federal judges during a Senate recess. The Recess Appointments Clause of Article II, Section 2, provides that “[t]he President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next session.”⁶ The term “Vacancies” refers to vacancies for positions described in the preceding Appointments Clause, including “Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law.”⁷ The recess power therefore appears to extend to *all vacancies* for offices ordinarily filled under the Appointments Clause, and those offices include the offices of federal judges.⁸

But what about Article III? The text of Article III, Section 1, provides in relevant part:

6. U.S. CONST. art. II, § 2, cl. 3.

7. *Id.* art. II, § 2, cl. 2.

8. As one commentator has observed, “the text of surrounding clauses shows that the framers generally chose explicit language when limiting the powers conferred therein.” Thomas A. Curtis, *Recess Appointments to Article III Courts: The Use of Historical Practice in Constitutional Interpretation*, 84 COLUM. L. REV. 1758, 1764 (1984). Compare, for example, the second clause of Article II, Section 2, which divides the general appointment power between superior and inferior offices, and expressly enables Congress to alter the President’s power with respect to the latter. Separating federal judges from the scope of the Recess Appointments Clause would also contradict the Framers’ explicit treatment of federal officers as a group, with no exclusion of judges or any other office. The Impeachment Clause, Article II, Section 4, refers to “the President, Vice President, and all civil Officers of the United States.” U.S. CONST. art. II, § 4. That is similar to the Recess Appointments Clause, which refers to “all vacancies” and “must be construed to relate to the ‘offices’ described in the preceding [clause].” THE FEDERALIST NO. 78, at 464 (Alexander Hamilton) (Clinton Rossiter ed., 1964); *see also id.* (“[T]he mode of appointing judges . . . is the same with that of appointing officers of the Union in general.”).

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.⁹

Some have suggested that this language, which implicitly gives judges life tenure by providing that judges "shall hold their Offices during good Behaviour," trumps the provision for recess appointments of judges in Article II.

To the extent that the text of the Constitution is ambiguous, however, the historical evidence chronicled in Part I of this paper supports the constitutionality of judicial recess appointments. History is significant to constitutional understanding both as a guide to original meaning and as to the establishment of a constitutional tradition that the courts should not disturb. The unique history of recess judicial appointments is persuasive on both scores. By the end of 1823, when many of those who drafted the Constitution were still alive, there had been five recess appointments to the Supreme Court, with no recorded opposition. George Washington himself made three recess appointments to federal courts during recesses of the First Congress, and two years later recess-appointed John Rutledge to the Supreme Court. Such an apparent consensus during the Founding period is compelling evidence of the original understanding.

The subsequent history similarly supports the constitutionality of judicial recess appointments. As Justice Frankfurter has observed, "[T]he way [the Constitution] has consistently operated fairly establishes that it has operated according to its true nature."¹⁰ As discussed at greater length in Part I, Presidents of all parties and at many different times during the nation's history have made recess appointments to every federal court, including the Supreme Court. Even when Congress as a body expressed disapproval of recess appointments to the Supreme Court, moreover, it did not challenge the President's power to make such appointments:

If there ever was ground for the argument that the more specific language of article III of the Constitution should be construed as excluding judicial appointments from the general authorization given the President in article

9. U.S. CONST. art. III, § 1.

10. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 610 (1952) (Frankfurter, J., concurring) ("Deeply embedded traditional ways of conducting government cannot supplant the Constitution or legislation, but they give meaning to the words of a text or supply them."); *see also* *Walz v. Tax Comm'n of New York*, 397 U.S. 664, 681 (1970) ("The more longstanding and widely accepted a practice, the greater its impact upon constitutional interpretation. History is particularly compelling . . . [where there exists] undeviating acceptance . . . [of a practice] from our earliest days as a Nation."). Historical traditions are particularly relevant where the constitutional dispute implicates the separation of powers. *See, e.g.*, *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 322 (1936); *Myers v. United States*, 272 U.S. 52, 175 (1926); *United States v. Midwest Oil Co.*, 236 U.S. 459, 472-73 (1915).

II, time has answered it. The President does have such power and this resolution does not argue otherwise.¹¹

While historical evidence cannot supplant a clear constitutional command, the absence of such a command with respect to the recess power suggests that historical evidence should be treated as persuasive.

On the few occasions that judicial recess appointments have been challenged in the federal courts, those challenges have failed. In *United States v. Allocco*, the Second Circuit rejected a claim that a recess appointee of President Eisenhower lacked the constitutional authority to preside over a criminal trial.¹² The Court reasoned that because the Constitution expressly confers power to fill “all” vacancies with no exceptions for judges, “it necessarily follows” that recess appointees “may exercise the power granted to Article III courts.”¹³

Similarly, in *United States v. Woodley*, an *en banc* panel of the Ninth Circuit rejected a claim that President Carter lacked authority to recess-appoint a federal judge who later convicted the defendant on federal narcotics charges.¹⁴ The panel found the Recess Appointments Clause dispositive of the issue, because the clause “explicitly” allows the President to “fill *all* vacancies during the recess of the Senate” and there is “no basis upon which to carve out an exception . . . for federal judges.”¹⁵ The panel then pointed to the “unbroken acceptance of the President’s use of the recess power to appoint federal judges,” concluding that the power was “woven into the fabric of our nation” and thus immune from constitutional challenge.¹⁶

Judge Norris, joined by Judges Fletcher, Ferguson, and Reinhardt, dissented. He contended that the defendant’s challenge posed “an extraordinary situation: a direct conflict between two provisions of the Constitution. No accommodation seems possible; one clause must yield to the other.”¹⁷ And he dismissed the early history of appointing federal judges through the recess power with the assertion that “[t]here is no reason to credit George Washington with any special insight into how the Framers intended the Recess Appointments power of Article II to interact with the salary and tenure provisions of Article III.”¹⁸

III. THE MECHANICS OF JUDICIAL RECESS APPOINTMENTS

Two provisions control the logistical aspects of making recess appointments of federal officials, including judges. First, the Recess Appointments Clause, as discussed

11. Virginia L. Richards, *Temporary Appointments to the Federal Judiciary: Article II Judges?*, 60 N.Y.U. L. REV. 702, 704 n. 11 (1985) (quoting 106 CONG. REC. 18,130 (1960) (remarks of Senator Hart)).

12. 305 F.2d 704, 709-14 (2d Cir. 1962).

13. *Id.* at 709.

14. 751 F.2d 1008, 1012-13 (9th Cir. 1985) (*en banc*).

15. 751 F.2d at 1010.

16. *Id.* at 1011-12.

17. *Id.* at 1017 (Norris, J., dissenting).

18. *Id.* at 1026.

above, grants the President the constitutional authority temporarily to fill vacancies without the Advice and Consent of the Senate if the Senate is in recess. It provides that “[t]he President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.”¹⁹ Second, only those recess appointees satisfying the criteria of 5 U.S.C. § 5503 are entitled to receive a salary. Although section 5503 cannot abrogate the President’s constitutional authority to make temporary appointments under the Recess Appointments Clause, it does, as a practical matter, influence a President’s decisions, since many appointees will be unable to accept a commission unless they can also draw a salary.

A. The Recess Appointments Clause

The Recess Appointments Clause grants the President the authority to make temporary appointments in order to keep the government running efficiently, even when the Senate is not available to offer Advice and Consent.²⁰ Temporary commissions granted through the President’s use of his Recess Appointments power expire at the end of the next session of Congress. A rejection or withdrawal of the recess appointee’s formal nomination does not terminate his temporary commission.²¹

1. “Vacancies That May Happen”

The text of the Constitution provides that the President may use his Recess Appointments power to fill any vacancy “that may happen” during a recess of the Senate.²² One possible construction of the word “happen” is that only those vacancies that “happen to occur” during a recess of the Senate can be filled by recess appointment. Such a limited construction of the phrase, however, was rejected early in the country’s history. A long line of Attorney General²³ and Office of Legal Counsel²⁴ opinions have held that the word refers to those vacancies that “happen to exist” during a recess of the Senate, whether the vacancies arise before or during the recess. That view has been

19. U.S. CONST. art. II, § 2, cl. 3.

20. The Recess Appointments Clause was proposed late in the Constitutional Convention and was passed with little debate. The apparent purpose of the Founders was to enable the President to preserve government “continuity and effectiveness” by making temporary appointments when the Senate was unavailable. Curtis, *supra* note 8, at 1768 (noting that *The Federalist No. 67* supports such a conclusion); Richards, *supra* note 11, at 702 (discussing the lack of legislative history for the Recess Appointments Clause).

21. See Curtis, *supra* note 8, at 1758 n.3; Richards, *supra* note 11, at 702 n.4.

22. U.S. CONST. art. II, § 2, cl. 3.

23. See, e.g., Recess Appointments, 41 Op. Att’y Gen. 463, *5-6 (1960) (citing 1 Op. Att’y Gen. 631 (1823); 2 Op. Att’y Gen. 525 (1832); 3 Op. Att’y Gen. 673 (1841); 7 Op. Att’y Gen. 186 (1855); 10 Op. Att’y Gen. 356 (1862); 12 Op. Att’y Gen. 32 (1866); 12 Op. Att’y Gen. 455 (1868); 14 Op. Att’y Gen. 562 (1875); 15 Op. Att’y Gen. 207 (1877); 16 Op. Att’y Gen. 522 (1880); 16 Op. Att’y Gen. 538 (1880); 17 Op. Att’y Gen. 530 (1883); 18 Op. Att’y Gen. 28 (1884); 18 Op. Att’y Gen. 29 (1884); 19 Op. Att’y Gen. 261 (1889); 26 Op. Att’y Gen. 234 (1907); 30 Op. Att’y Gen. 314 (1914); 33 Op. Att’y Gen. 20, 22-23 (1921)), available at 1960 U.S. AG LEXIS 5 [hereinafter 1960 Opinion].

24. See 3 Op. Off. Legal Counsel 314 (1979), available at 1979 OLC LEXIS 58 [hereinafter 1979 Opinion].

confirmed by the Second Circuit, in its *Allocco* decision, and by the *en banc* Ninth Circuit, in its *Woodley* decision.²⁵

Congress has acquiesced in this expansive interpretation of the word “happen.” Initially, Congress did not allow recess appointees to draw a salary if they were filling a vacancy that opened while the Senate was in session. This congressional policy, Acting Attorney General Walsh explained in a 1960 opinion, “implicitly assumed that the power existed [to fill vacancies that existed while the Senate was in session], but sought to render it ineffective by prohibiting the payment of the salary to the person so appointed.”²⁶ In 1940, however, recognizing that its policy on salaries was undermining the objective of the Recess Appointments Clause, Congress passed a statutory amendment allowing the payment of salaries to these appointees, as long as certain other requirements were met.²⁷

2. “During the Recess of the Senate”

The constitutional text provides that the President may fill vacancies that happen “during the Recess of the Senate.”²⁸ Numerous Attorneys General have addressed what type of adjournment constitutes a recess during which the President may make temporary appointments. Must the recess be the formal break following each session of Congress (intersession recess), or may it instead be a temporary adjournment within a session of Congress (intrasession recess)? Although a few early Attorney General opinions advised Presidents to make recess appointments only during intersession recesses, the commonly accepted rule today is that the President is authorized to make intrasession appointments as well.²⁹

In 1901, Attorney General Knox advised the President that he did not have the power to make a recess appointment during a holiday adjournment of the Senate.³⁰ There

25. See *United States v. Woodley*, 751 F.2d 1008 (9th Cir. 1985) (*en banc*); *United States v. Allocco*, 305 F.2d 704 (2d Cir. 1962). Both *Woodley* and *Allocco* cited and followed an 1880 federal district court decision. See *In re Farrow*, 3 F. 112, 116 (N.D. Ga. 1880) (stating that the President may make appointments “notwithstanding the fact that the vacancy filled by his appointment first happened when the senate was in session”).

26. 1960 Opinion, *supra* note 23, at *6-7 (discussing the history of 5 U.S.C. § 56, the precursor to 5 U.S.C. § 5503); see also *Woodley*, 751 F.2d at 1013 (stating that “[b]oth Houses of Congress have apparently recognized the soundness of this construction of the recess power,” which allows “the President the authority to fill all vacancies that exist while the Senate is in recess”).

27. See *Allocco*, 305 F.2d at 714-15 (discussing salary payment for recess appointees); LOUIS FISHER, CONGRESSIONAL RESEARCH SERVICE, RECESS APPOINTMENTS OF FEDERAL JUDGES 6 (2001) [hereinafter CRS REPORT].

28. U.S. CONST. art. II, § 2, cl. 3.

29. *But see* Michael A. Carrier, *When Is the Senate in Recess for Purposes of the Recess Appointments Clause?*, 92 MICH. L. REV. 2204, 2217 (1994) (arguing that “limiting the Recess Appointments Clause to intersession recesses accords most consistently with the Framers’ intentions”).

30. President—Appointment of Officers—Holiday Recess, 23 Op. Att’y Gen. 599 (1901), available at 1901 U.S. AG LEXIS 1 [hereinafter 1901 Opinion]; see also CRS REPORT, *supra* note 27, at 3. The adjournment was from December 19, 1901 to January 6, 1902. See Executive Power—Recess Appointments, 33 Op. Att’y Gen. 20, *2 (1921), available at 1921 U.S. AG LEXIS 17 [hereinafter 1921 Opinion].

is a difference between an “adjournment” and a “recess,” the Attorney General observed.³¹ A mid-session adjournment, according to General Knox, was merely a “temporary suspension of business.”³² However, the phrase used in the Recess Appointments Clause is “*the Recess*,” and General Knox reasoned that the phrase therefore referred to the period between sessions of Congress.³³ General Knox concluded that the President may make recess appointments during the latter period, but not the former.³⁴

In 1921, however, another Attorney General took the opposite position. Attorney General Daugherty advised the President that he could make recess appointments during a mid-session adjournment from August 24 to September 21, 1921.³⁵ The question, he stated, “is whether in a practical sense the Senate is in session so that its advice and consent can be obtained.”³⁶ Denying the President his Recess Appointments power because the Senate adjourns to a specified date, rather than *sine die*, would be to undermine the purpose of the clause—the efficient exercise of government functions. “I can not bring myself to believe,” he concluded, “that the framers of the Constitution ever intended such a catastrophe to happen.”³⁷

Subsequent opinions have agreed with General Daugherty’s conclusion. In 1960, Acting Attorney General Walsh advised the President that he could make recess appointments during a temporary adjournment of the Senate from July 3 to August 8, 1960. In doing so, he relied heavily upon General Daugherty’s 1921 opinion. A vacancy, he advised, “is no less adverse to the public interest because it occurs after a temporary

31. 1901 Opinion, *supra* note 30, at *5.

32. *Id.*

33. *Id.*

34. *Id.* at *6.

35. 1921 Opinion, *supra* note 30.

36. *Id.* at *3. He continued, “To give the word ‘recess’ a technical and not a practical construction, is to disregard substance for form.” *Id.*

37. *Id.* at *6-7. Buttressing this conclusion, he added, is a 1905 Senate report, which defined “recess”:

[The Framers] used the word as the mass of mankind then understood it and now understand it. It seems, in our judgment, in this connection the period of time when the Senate is not sitting in regular or extraordinary session as a branch of the Congress, or in extraordinary session for the discharge of executive functions; when its members owe no duty of attendance; when its Chamber is empty; when, because of its absence, it can not receive communications from the President or participate as a body in making appointments.

This is essentially a proviso to the provision relative to appointments by and with the advice and consent of the Senate. It was carefully devised so as to accomplish the purpose in view, without in the slightest degree changing the policy of the Constitution, that such appointments are only to be made with the participation of the Senate. Its sole purpose was to render it certain that at all times there should be, whether the Senate was in session or not, an officer for every office, entitled to discharge the duties thereof.

Id. at *7-8 (quoting S. REP. NO. 58-4389 (1905), available at 39 CONG. REC. 3823, 3824). The Attorney General cited, as further support, *Gould v. United States*, 19 Ct. Cl. 593 (1884), in which the Court of Claims held that the President was authorized to make recess appointments during a temporary adjournment of the Senate from July 20 to November 21, 1967. See 1921 Opinion, *supra* note 30, at *7.

rather than after a final adjournment of a session.”³⁸ Furthermore, he noted, the 1921 opinion had since been affirmed by an opinion of the Comptroller General, which authorized payment of salaries to several judges recess-appointed during an intrasession recess.³⁹ In 1982, Assistant Attorney General Theodore Olson advised the President that “there have been no developments which call into question the validity of the pertinent conclusions in the 1960 opinion of Acting Attorney General Walsh,” and the President is authorized to make recess appointments during an intrasession Senate recess from October 2, 1982, to November 29, 1982.⁴⁰ Subsequent opinions further confirmed this view.⁴¹

The only remaining question is how long an intrasession break must be before the President may use the Recess Appointments power. It seems to be undisputed that recesses lasting more than a month, such as the adjournment addressed by Acting Attorney General Walsh in 1960, are long enough.⁴² A 1992 Attorney General opinion found that an eighteen-day break is sufficient, citing an eighteen-day intrasession recess appointment made by President Reagan and a fifteen-day recess appointment made by President Coolidge.⁴³ Although General Daugherty’s 1921 opinion concluded that ten days is probably too short,⁴⁴ a 1993 Justice Department brief stated that recess appointments might be justified for any break in excess of three days.⁴⁵ President George H.W. Bush appointed Thomas Ludlow Ashley to the Postal Service Board of Governors during a twelve-day recess,⁴⁶ and President Clinton appointed James Hormel ambassador to Luxembourg during the Senate’s ten-day Memorial Day break.⁴⁷

3. “Commissions Which Shall Expire at the End of their Next Session”

There is little dispute that recess appointments expire at the end of the next full session after the recess appointment.⁴⁸ If an appointment is made during an intrasession recess, the following meeting of Congress is not the “next Session”; instead, it is merely a

38. 1960 Opinion, *supra* note 23, at *9.

39. 28 Comp. Gen. 30 (1948).

40. Recess Appointment Issues, 6 Op. Off. Legal Counsel 585, 588 (1982) [hereinafter 1982 Opinion].

41. Intrasession Recess Appointments, 1989 OLC LEXIS 111 (1989) [hereinafter 1989 Opinion]; The Constitutional Separation of Powers Between the President and Congress, 1996 OLC LEXIS 60 (1996); *cf.* *Nippon Steel Corp. v. United States Int’l Trade Comm’n*, 239 F. Supp. 2d 1367, 1374 n.13 (Ct. Int’l Trade 2002) (noting that “[t]he long history of the practice [of intrasession recess appointments] (since at least 1867) without serious objection by the Senate . . . demonstrates the legitimacy of these appointments”).

42. 1960 Opinion, *supra* note 23 (addressing a recess from July 3 to August 8, 1960); *see also* 1979 Opinion, *supra* note 24 (addressing a recess from August 2 to September 4, 1979).

43. Recess Appointments During an Intrasession Recess, 1992 OLC LEXIS 52, *3 (1992).

44. 1921 Opinion, *supra* note 30.

45. CRS REPORT, *supra* note 27, at 4.

46. Carrier, *supra* note 29, at 2215.

47. *See, e.g.*, Tom Raum, *Clinton Gives “Recess Appointment” to Gay Philanthropist*, ASSOCIATED PRESS, June 4, 1999.

48. *See, e.g.*, 1982 Opinion, *supra* note 40, at 586 (“The prevailing view is that the language ‘next Session’ in Article II, § 2, clause 3 refers to the session following the adjournment *sine die* of the current one.”); *see also* 1989 Opinion, *supra* note 41, at *6; 1960 Opinion, *supra* note 23, at *14-15.

continuation of the current session. The “next Session” is the session following the adjournment *sine die* of the current session.

For instance, if President Bush had made a recess appointment during the Senate’s summer break, the 2003 fall meeting of the Senate would not be the “next session.” Instead, it would simply be the remainder of the current first session of the 108th Congress. Barring a special session, the temporary commissions would terminate at the end of 2004, which is the end of the “next session”—the second session of the 108th Congress. In contrast, if President Bush were to make recess appointments between the first and second sessions of the 108th Congress, then the temporary commissions would still terminate at the end of 2004, because that would be the end of the next full session.⁴⁹

B. Payment of Recess Appointees

Although the President has the constitutional authority to make temporary appointments during Senate recesses, Congress claims the authority to authorize expenditures for the payment of these officials’ salaries. Initially, certain kinds of recess appointees (those appointed to fill a vacancy existing while the Senate was in session), were prohibited from receiving their salaries until such time as the Senate reconvened and approved their nomination.⁵⁰ However, this situation created difficulties, since appointees were not always in a financial position to wait until they had been confirmed before receiving payment. The practical result was that the President sometimes found himself forced to leave vacancies open, undermining the purpose of the Recess Appointments Clause.⁵¹

In 1940, an amendment to the then-existing statute on the matter, 5 U.S.C. § 56, was enacted to solve this problem. Under the current version of that statute, 5 U.S.C. § 5503, salaries may be paid to recess appointees appointed to fill a vacancy that existed while the Senate was in session in three circumstances:⁵²

Vacancy Occurs Within Thirty Days Of Recess. Section 5503(a)(1) provides that a recess appointee may be paid if the vacancy he is filling occurred “within 30 days before the end of the session of the Senate.”⁵³ Attorney General and Office of Legal Counsel opinions have held that “before the end of the session” means the last thirty days before the Senate’s recess, whether it be an intrasession recess or an intersession recess. These opinions have noted that construing the phrase to refer only to the end of the formal

49. The possibility of differing terms for the temporary commissions is one factor that caused General Knox to disfavor intrasession recess appointments. *See* 1901 Opinion, *supra* note 30, at *10.

50. CRS REPORT, *supra* note 27, at 5.

51. *See* 1960 Opinion, *supra* note 23, at *6, 22-23 (detailing difficulties that existed prior to 1940 amendments); *see also* CRS REPORT, *supra* note 27, at 5-6 (discussing recess appointees who were forced to serve without pay before the 1940 amendment to what is now 5 U.S.C. § 5503).

52. 1982 Opinion, *supra* note 40, at 586 (noting that the recipients of recess appointments made during intrasession breaks may receive payment of salaries if the requirements of § 5503 are met); 1989 Opinion, *supra* note 41, at *6 (same); *see also* 1960 Opinion, *supra* note 23, at *18-25 (discussing 5 U.S.C. § 56, the precursor to § 5503).

53. 5 U.S.C. § 5503(a)(1).

session would conflict with the obvious purpose of the law, which is to promote the ability of the President to run the government efficiently.⁵⁴

Nomination Is Pending. Section 5503(a)(2) provides that a recess appointee may be paid if, “at the end of the session, a nomination for the office, other than the nomination of an individual appointed during the preceding recess of the Senate, was pending before the Senate for its advice and consent.”⁵⁵ Nominations are considered to be “not pending” if they have been rejected by the full Senate.⁵⁶ In addition, if an individual’s own nomination is pending before Congress, that pending nomination may satisfy this clause and enable him to be paid if the President recess-appoints him to the position for which his nomination is pending.⁵⁷

Rejection of Nominee Within Thirty Days Of Recess. Section 5503(a)(3) provides that a recess appointee may be paid if a “nomination for the office was rejected by the Senate within 30 days before the end of the session.”⁵⁸ The recess appointee must be an individual other than the rejected nominee.

In each of these three circumstances, a nomination to fill the vacancy must be submitted to the Senate “not later than 40 days after the beginning of the next session of the Senate.”⁵⁹ A failure to submit the nomination will cause the recess appointee not to be paid. The appointee’s right to be paid will also terminate if there is a vote to reject his pending nomination.⁶⁰

One question that remains unresolved is whether submission of nominations to the Senate following the recess must be made within forty days of the beginning of the next formal session or forty days within the Senate’s return from its recess. Most agree that submitting nominations is a relatively easy matter, and it is safer to submit the nominations as soon as possible so as to protect the pay status of the recess appointees.⁶¹

IV. THE POLITICS OF JUDICIAL RECESS APPOINTMENTS

54. *See, e.g.*, 1960 Opinion, *supra* note 23, at *21-25 (discussing the provision in 5 U.S.C. § 56); *see also* 1982 Opinion, *supra* note 40, at 586 (discussing the codification of 5 U.S.C. § 56 at 5 U.S.C. § 5503 and noting that “any changes in wording since the times of the 1960 Attorney General opinion . . . would appear to have been made without any intention to make substantive changes”).

55. 5 U.S.C. § 5503(a)(2).

56. In 1989, an opinion was issued stating that a nomination was “still pending” for purposes of this provision when a committee had refused to report the nominee favorably to the Senate for a vote. After all, the opinion noted, the full Senate still has the ability to discharge the nomination from committee and force a floor vote. 1989 Opinion, *supra* note 41, at *8 (“We believe, however, that a nomination must be regarded as having been ‘pending before the Senate’ if, under any circumstance, the Senate could have acted on the nomination.”).

57. *See id.* at *7-10.

58. 5 U.S.C. § 5503(a)(3).

59. 5 U.S.C. § 5503(b).

60. *See, e.g.*, 1960 Opinion, *supra* note 23, at *5.

61. *See, e.g.*, 1982 Opinion, *supra* note 40, at 587; 1960 Opinion, *supra* note 23, at *25.

Laying aside any institutional considerations, there are various potential political considerations respecting the use of recess appointments to the federal judiciary. Obviously, recess appointments would allow the President to fill vacancies, if only temporarily, for which the Senate has been unable to confirm the President's nominees. Of the President's eighteen nominees to the federal courts of appeals pending as of January 1, 2004, eleven were for vacancies that have been designated by the Judicial Conference as constituting a "judicial emergency."⁶² Ten of the President's pending nominees to the federal district courts were likewise for vacancies classified as "judicial emergencies."⁶³ Recess appointments for those vacancies would relieve pressure on the relevant courts until permanent appointees can be confirmed.

On the other hand, recess appointments could serve to *galvanize* opposition to nominees, to the extent that opponents perceive recess appointments as an attempt to circumvent and/or influence the senatorial advice-and-consent process. It is hard to deny that, "in today's supercharged judicial nominations environment, recess appointments . . . will ignite a political firestorm."⁶⁴ Indeed, by *eliminating* judicial emergencies (if only temporarily), recess appointments may inadvertently serve to undermine one of the strongest arguments in favor of a prompt up-or-down vote on controversial nominees in the first place. And opponents of the President's nominees will likely contend that the very act of recess appointment is unconstitutional.

One option is for the President to give recess appointments to individuals who have already been nominated for permanent appointments. The vast majority of previous judicial recess appointees who were nominated for permanent appointment were subsequently confirmed. Many of those nominations, however, were uncontroversial, with the recess appointment serving merely as a mechanism of convenience to allow the appointee to take office sooner rather than later. It is possible that a recess appointment of a controversial nominee would reduce opposition to his or her ultimate confirmation. On the other hand, a controversial nominee's actions as a recess-appointed judge would inevitably receive the closest scrutiny. And it could be even more politically costly for the President if a recess appointee is not confirmed and thereby taken out of commission forever than if he chooses to leave a nomination pending in the hopes that there is some prospect that the political climate would become more favorable for the nominee's ultimate confirmation. Finally, as a practical matter, a nominee may be unwilling to

62. See Office of Legal Policy, *Nominations*, U.S. Department of Justice, at <http://www.usdoj.gov/olp/nominations.htm> (last visited Jan. 2, 2004); Administrative Office, *Revised Definition for Judicial Emergencies*, U.S. Courts, at <http://www.uscourts.gov/vacancies/emergencies.htm> (last visited Jan. 2, 2004).

63. See *supra* note 62.

64. See Randolph J. May, *Checkmate in the Judges Game?*, LEGAL TIMES, Sept. 8, 2003, at 58. In the 1990s, President Clinton and congressional Republicans bitterly sparred over Clinton's nomination of former NAACP lawyer Bill Lann Lee to be the Assistant Attorney General in charge of the Civil Rights Division. At least initially, however, that controversy did not involve a recess appointment. Instead, President Clinton hired Lee as a deputy assistant attorney general, a position that did not require Senate confirmation, and then promoted him to the position of "acting" assistant attorney general, in effect filling the position for which he had originally been nominated. Ultimately, President Clinton did give Lee a recess appointment on August 3, 2000, well over two years after Lee was first named "acting" assistant attorney general—a move that allowed Lee to serve until the end of President Clinton's term in office.

accept a recess appointment, given that the nominee would have to quit his or her current job, with no guarantee of confirmation, before doing so.

Another alternative would be for the President to give recess appointments to individuals who are not candidates for permanent appointments, and to indicate that he will continue doing so as long as his nominees fail to receive a prompt up-or-down vote.⁶⁵ Such individuals, unlike recess appointees who are also nominees for permanent appointments, would not be under any political pressure to temper their decisions in order to ensure confirmation. And such recess appointments might better highlight the gridlock in the nominations process than appointments of individuals who have already been nominated. Specifically, in making such an appointment, the President points out in a tangible way that a few Senators engaged in the filibuster of a pending nominee are causing the Senate to abdicate its responsibility to provide an up-or-down vote, and because someone else has been only temporarily appointed, the Senate *still* has a duty to cast a vote for the pending nominee. On the other hand, such recess appointments might nevertheless galvanize opposition to the President's nominees for permanent appointments, for any number of the reasons stated above.

65. See Kate O'Beirne, *The Joy of Recess*, NAT'L REV., Oct. 13, 2003, at 20; Paul Rosenzweig & Todd Gaziano, *It's Time to Solve the Judicial Confirmation Crisis*, TOWNHALL.COM, May 9, 2003, at <http://www.townhall.com/columnists/guestcolumns/Gaziano20030509.shtml>.

APPENDIX A

Recess appointments of U.S. Supreme Court justices

U.S. Supreme Court Justice	Position	Date of Recess Appointment	Ultimate Action
Stewart, Potter	Associate	10/14/1958	Confirmed 5/5/1959
Brennan, William J.	Associate	10/15/1956	Confirmed 3/19/1957
Warren, Earl	Chief	10/2/1953	Confirmed 3/1/1954
Holmes, Oliver W.	Associate	8/11/1902	Confirmed 12/4/1902
Harlan, John M.	Associate	3/29/1877	Confirmed 11/29/1877
Davis, David	Associate	10/17/1862	Confirmed 12/8/1862
Curtis, Benjamin R.	Associate	9/22/1851	Confirmed 12/20/1851
Woodbury, Levi	Associate	9/20/1845	Confirmed 1/3/1846
McKinley, John	Associate	4/22/1837	Confirmed 9/25/1837
Thompson, Smith	Associate	9/1/1823	Confirmed 12/19/1823
Livingston, Henry B.	Associate	11/10/1806	Confirmed 12/17/1806
Moore, Alfred	Associate	10/20/1799	Confirmed 12/10/1799
Washington, Bushrod	Associate	9/29/1798	Confirmed 12/20/1798
Rutledge, John	Chief	7/1/1795	Recess app't expired 12/15/1795 after failed nomination
Johnson, Thomas	Associate	8/5/1791	Confirmed 11/7/1791

APPENDIX B
Number of recess-appointed judges by President⁶⁶

U.S. President	Number of Recess App'ts	# Recess App'ts Later Confirmed
George W. Bush (2001-present)	NONE (to date)	N/A
William J. Clinton (1993-2001)	1	1/1
George H.W. Bush (1989-93)	NONE	N/A
Ronald Reagan (1981-89)	NONE	N/A
Jimmy Carter (1977-81)	1	0/1
Gerald Ford (1974-77)	NONE	N/A
Richard M. Nixon (1969-74)	NONE	N/A
Lyndon B. Johnson (1963-69)	4	3/4
John F. Kennedy (1961-63)	25	25/25
Dwight D. Eisenhower (1953-61)	27	26/27
Harry S Truman (1945-53)	39	33/39
Franklin D. Roosevelt (1933-45)	15	13/15
Herbert Hoover (1929-33)	9	8/9
Calvin Coolidge (1923-29)	25	22/25
Warren G. Harding (1921-23)	5	5/5
Woodrow Wilson (1913-21)	9	7/9
William H. Taft (1909-13)	5	1/5
Theodore Roosevelt (1901-09)	30	26/30
William McKinley (1897-1901)	11	9/11
Grover Cleveland (1893-97)	7	6/7
Benjamin Harrison (1889-93)	7	7/7
Grover Cleveland (1885-89)	5	5/5
Chester Arthur (1881-85)	4	4/4
James A. Garfield (1881)	2	2/2
Rutherford B. Hayes (1877-81)	3	3/3
Ulysses S. Grant (1869-77)	7	6/7
Andrew Johnson (1865-69)	3	3/3
Abraham Lincoln (1861-65)	9	8/9
James Buchanan (1857-61)	1	1/1
Franklin Pierce (1853-57)	4	2/4
Millard Fillmore (1850-53)	1	1/1
Zachary Taylor (1849-50)	2	2/2
James Polk (1845-49)	2	2/2
John Tyler (1841-45)	NONE	N/A
William Henry Harrison (1841)	NONE	N/A
Martin Van Buren (1837-41)	3	3/3
Andrew Jackson (1829-37)	5	4/5
John Quincy Adams (1825-29)	6	5/6
James Monroe (1817-25)	8	8/8

66. Not included in the total number of recess appointments for each President are those appointments that were declined by the temporary appointee. Also not included are three appointees in the early 1800s for which detailed information about the appointment is not available (i.e. whether the commission was accepted and, if so, whether the nominee was subsequently confirmed). *See* Appendix C.

U.S. President	Number of Recess App'ts	# Recess App'ts Later Confirmed
James Madison (1809-17)	1	1/1
Thomas Jefferson (1801-09)	8	7/8
John Adams (1797-1801)	3	3/3
George Washington (1789-97)	9	8/9

APPENDIX C
Recess appointments of federal judges

Judge	Court	Recess App't Date	Ultimate Action	Vacancy Prior to App't
GEORGE W. BUSH (2001-present)				
NONE TO DATE				
WILLIAM J. CLINTON (1993-2001)				
Gregory, Roger	4th Cir.	12/27/2000	Confirmed 7/20/2001	10 years, 8 months
GEORGE H.W. BUSH (1989-93)				
NONE				
RONALD REAGAN (1981-89)				
NONE				
JIMMY CARTER (1977-81)				
Heen, Walter M.	D. Haw.	1/1/1981	Recess app't expired 12/16/1981 after failed nomination	2 years
GERALD FORD (1974-77)				
NONE				
RICHARD M. NIXON (1969-74)				
NONE				
LYNDON B. JOHNSON (1963-69)				
Davis, John M.	E.D. Pa.	1/7/1964	Confirmed 3/14/1964	2 years, 6 months
Rabinovitz, David	W.D. Wis.	1/7/1964	Recess app't expired 10/3/1964 after failed nomination	1 year
Higginbotham, A.L.	E.D. Pa.	1/6/1964	Confirmed 3/14/1964	2 years, 4.5 months
Robinson, Spottswood W.	D.D.C.	1/6/1964	Confirmed 7/1/1964	3 years, 7.5 weeks
JOHN F. KENNEDY (1961-63)				
Nealon, William J.	M.D. Pa.	12/13/1962	Confirmed 3/15/1963	8.5 months
Decker, Bernard M.	N.D. Ill.	12/12/1962	Confirmed 3/28/1963	6 months, 3 weeks
Almond, James L.	Customs & Patents Appeals	10/23/1962	Confirmed 6/28/1963	11 days
Gray, Frank, Jr.	M.D. Tenn.	11/20/1961	Confirmed 2/17/1962	6.5 months
Neese, C.G.	E.D. Tenn.	11/20/1961	Confirmed 2/7/1962	6 months
Rosenberg, Louis	W.D. Pa.	11/20/1961	Confirmed 7/10/1962	6 months

Judge	Court	Recess App't Date	Ultimate Action	Vacancy Prior to App't
Winter, Harrison L.	D. Md.	11/9/1961	Confirmed 2/7/1962	5.5 months
Preyer, Lunsford R.	M.D.N.C.	10/7/1961	Confirmed 2/7/1962	4.5 months
Bell, Griffin B.	5th Cir.	10/5/1961	Confirmed 2/5/1962	5 months
Bonsal, Dudley B.	S.D.N.Y.	10/5/1961	Confirmed 3/16/1962	4.5 months
Brewster, Henry L.	N.D. Tex.	10/5/1961	Confirmed 3/16/1962	4.5 months
Cooper, Irving B.	S.D.N.Y.	10/5/1961	Confirmed 9/20/1962	4.5 months
Daugherty, Frederick A.	N.D. Okla. & E.D. Okla. & W.D. Okla.	10/5/1961	Confirmed 2/7/1952	4.5 months
Feinberg, Wilfred	S.D.N.Y.	10/5/1961	Confirmed 3/16/1962	4.5 months
Gewin, Walter P.	5th Cir.	10/5/1961	Confirmed 2/5/1962	4.5 months
Green, Ben C.	N.D. Ohio	10/5/1961	Confirmed 6/29/1962	4.5 months
Hays, Paul R.	2nd Cir.	10/5/1961	Confirmed 3/16/1962	4.5 months
Hughes, Sarah T.	N.D. Tex.	10/5/1961	Confirmed 3/16/1962	4.5 months
Marshall, Thurgood	2nd Cir.	10/5/1961	Confirmed 9/11/1962	4.5 months
Noel, James L.	S.D. Tex.	10/5/1961	Confirmed 3/16/1962	4.5 months
Peck, John W.	S.D. Ohio	10/5/1961	Confirmed 4/11/1962	4.5 months
Rosling, George	E.D.N.Y.	10/5/1961	Confirmed 3/16/1962	4.5 months
Smith, Talbot	E.D. Mich.	10/5/1961	Confirmed 2/5/1962	4.5 months
Spears, Adrian A.	W.D. Tex.	10/5/1961	Confirmed 3/16/1962	4.5 months
Allgood, Clarence W.	N.D. Ala.	9/23/1961	Confirmed 2/5/1962	4 months
DWIGHT D. EISENHOWER (1953-61)				
Caffrey, Andrew A.	D. Mass.	10/30/1960	Confirmed 8/9/1961	5 months
Feikens, John	E.D. Mich.	10/13/1960	Recess app't expired 9/27/1961 after failed nomination	7 months
Tavares, Cyrus N.	D. Haw.	10/13/1960	Confirmed 9/21/1961	7.5 weeks
Henley, J. Smith	E.D. Ark.	10/25/1958	Confirmed 9/2/1959	7 weeks
Boreman, Herbert S.	4th Cir.	10/17/1958	Confirmed 6/16/1959	7 months
Stewart, Potter	S. Ct.	10/14/1958	Confirmed 5/5/1959	
Robson, Edwin A.	N.D. Ill.	9/29/1958	Confirmed 4/29/1959	5.5 weeks
Hart, George L.	D.D.C.	8/29/1958	Confirmed 9/9/1959	6 months
Stanley, Edwin M.	M.D.N.C.	10/23/1957	Confirmed 2/25/1958	18 weeks
Moore, Leonard P.	2nd Cir.	9/6/1957	Confirmed 2/25/1958	8 months
Brennan, William J.	S. Ct.	10/15/1956	Confirmed 3/19/1957	None
Kerr, Ewing T.	D. Wyo.	10/22/1955	Confirmed 3/1/1956	None
Cashin, John M.	S.D.N.Y.	8/17/1955	Confirmed 3/1/1956	17 days
Lieb, Joseph P.	M.D. Fla.	8/13/1955	Confirmed 3/1/1956	6 weeks
Herlands, William B.	S.D.N.Y.	8/12/1955	Confirmed 6/26/1956	10 months
Kraft, Charles	E.D. Pa.	8/12/1955	Confirmed 3/28/1956	6 months
Watkins, Robert D.	D. Md.	8/12/1955	Confirmed 3/1/1956	10 weeks
Devitt, Edward J.	D. Minn.	12/10/1954	Confirmed 2/4/1955	2 months
Bastian, Walter M.	D.C. Cir.	9/20/1954	Confirmed 12/2/1954	10 weeks
Cecil, Lamar R.	E.D. Tex.	8/31/1954	Confirmed 12/2/1954	6.5 months
Mickelson, George T.	D.S.D.	12/9/1953	Confirmed 2/9/1954	None
Schnackenberg, Elmer J.	7th Cir.	11/17/1953	Confirmed 2/9/1954	11 months
Day, Edward W.	D.R.I.	11/10/1953	Confirmed 2/9/1954	16 weeks
Hincks, Carroll C.	2nd Cir.	10/3/1953	Confirmed 2/9/1954	13 weeks
Hunter, Edwin F.	W.D. La.	10/3/1953	Confirmed 2/9/1954	28 weeks

Judge	Court	Recess App't Date	Ultimate Action	Vacancy Prior to App't
Warren, Earl	S. Ct.	10/2/1953	Confirmed 3/1/1954	24 days
Danaher, John A.	D.C. Cir.	10/1/1953	Confirmed 3/30/1954	2 weeks
HARRY S TRUMAN (1945-53)				
Friedman, Monroe M.	N.D. Cal.	7/17/1952	Recess app't expired 7/24/1953 after failed nomination	1 year, 4 months
Edelstein, David N.	S.D.N.Y.	11/1/1951	Confirmed 4/7/1952	9 months
Tolin, Ernest A.	S.D. Cal.	10/30/1951	Confirmed 6/10/1952	2 months
Bastian, Walter M.	D.D.C.	10/23/1950	Confirmed 12/14/1950	None
Byrne, William M.	S.D. Cal.	9/27/1950	Confirmed 12/13/1950	1 year
Carter, Oliver J.	N.D. Cal.	9/27/1950	Confirmed 12/13/1950	8 weeks
Taylor, Robert L.	E.D. Tenn.	11/2/1949	Confirmed 3/8/1950	None
Andrews, Maurice N.	N.D. Ga.	10/21/1949	Resigned 10/31/1950 after failed nomination	None
Bazon, David L.	D.C. Cir.	10/21/1949	Confirmed 2/8/1950	11 weeks
Burns, Owen M.	W.D. Pa.	10/21/1949	Confirmed 3/8/1950	11 weeks
Clary, Thomas J.	E.D. Pa.	10/21/1949	Confirmed 3/8/1950	11 weeks
Fahy, Charles	D.C. Cir.	10/21/1949	Confirmed 4/4/1950	11 weeks
Grim, Allan K.	E.D. Pa.	10/21/1949	Confirmed 4/4/1950	11 weeks
Hastie, William H.	3rd Cir.	10/21/1949	Confirmed 7/19/1950	11 weeks
Hill, Delmas C.	10th Cir.	10/21/1949	Confirmed 3/8/1950	11 weeks
Hooper, Frank A.	N.D. Ga.	10/21/1949	Confirmed 2/21/1950	11 weeks
Kaufman, Irving R.	S.D.N.Y.	10/21/1949	Confirmed 4/4/1950	11 weeks
Kirkland, James R.	D.D.C.	10/21/1949	Confirmed 3/8/1950	11 weeks
McGohey, John F.X.	S.D.N.Y.	10/21/1949	Confirmed 3/8/1950	11 weeks
McLaughlin, Charles F.	D.D.C.	10/21/1949	Confirmed 2/28/1950	11 weeks
Matthews, Burnita S.	D.D.C.	10/21/1949	Confirmed 4/4/1950	11 weeks
Noonan, Gregory F.X.	S.D.N.Y.	10/21/1949	Confirmed 4/25/1950	9.5 months
Ritter, Willis W.	D. Utah	10/21/1949	Confirmed 6/29/1950	21 weeks
Solomon, Gus J.	D. Ore.	10/21/1949	Confirmed 6/27/1950	11 weeks
Swaim, Hardress N.	7th Cir.	10/21/1949	Confirmed 2/8/1950	11 weeks
Switzer, Carroll O.	S.D. Iowa	10/21/1949	Recess app't expired 8/9/1950 after failed nomination	7.5 months
Washington, George T.	D.C. Cir.	10/21/1949	Confirmed 4/28/1950	11 weeks
Wright, James S.	E.D. La.	10/21/1949	Confirmed 3/8/1950	None
Sugarman, Sidney	S.D.N.Y.	10/15/1949	Confirmed 4/28/1950	2.5 months
Henderson, David E.	W.D.N.C.	9/1/1948	Resigned 2/14/1949	6 months
Harper, Roy W.	E.D. Mo. & W.D. Mo.	6/22/1948	Confirmed 1/31/1949	4 weeks
Kaufman, Samuel H.	S.D.N.Y.	6/22/1948	Confirmed 1/31/1949	3 months
Rao, Paul P.	Customs Ct.	6/22/1948	Confirmed 1/31/1949	7.5 weeks
Tamm, Edward A.	D.D.C.	6/22/1948	Confirmed 3/29/1949	7 weeks
Harper, Roy W.	E.D. Mo. & W.D. Mo.	12/20/1947	Recess app't expired 6/22/1948 after failed nomination	4 weeks
Ryan, Sylvester J.	S.D.N.Y.	11/1/1947	Confirmed 12/18/1947	1 day
Harper, Roy W.	E.D. Mo. & W.D. Mo.	8/7/1947	Recess app't expired 12/19/1947 after failed nomination	4 weeks

Judge	Court	Recess App't Date	Ultimate Action	Vacancy Prior to App't
Curran, Edward M.	D.D.C.	10/16/1946	Confirmed 2/30/1947	None
Keech, Richmond B.	D.D.C.	10/14/1946	Confirmed 1/22/1947	None
FRANKLIN D. ROOSEVELT (1933-45)				
Bard, Guy K.	E.D. Pa.	12/20/1939	Confirmed 4/24/1940	13.5 weeks
Walker, Thomas G.	D.N.J.	12/20/1939	Confirmed 3/5/1940	1 year, 6 months
Barksdale, Alfred D.	W.D. Va.	12/19/1939	Confirmed 2/1/1940	None
Dobie, Armistead M.	4th Cir.	12/19/1939	Confirmed 2/1/1940	2 months
Igoe, Michael L.	N.D. Ill.	11/21/1938	Confirmed 2/9/1939	25 weeks
Kerner, Otto, Sr.	7th Cir.	11/21/1938	Confirmed 2/1/1939	25 weeks
Allred, James V.	S.D. Tex.	7/11/1938	Confirmed 2/16/1939	6 weeks
Roberts, Floyd H.	W.D. Va.	7/6/1938	Recess app't expired 2/6/1939 after failed nomination	5 weeks
Druffel, John H.	S.D. Ohio	9/22/1937	Confirmed 12/8/1937	1 month
Davis, David J.	N.D. Ala.	12/10/1935	Confirmed 1/22/1936	12 weeks
Thomas, Seth	8th Cir.	12/2/1935	Confirmed 1/22/1936	2 days
Levitt, Albert	D.V.I.	9/20/1935	Resigned 7/31/1936	Unavailable
Holly, William H.	N.D. Ill.	11/8/1933	Confirmed 2/20/1934	4.5 months
Sullivan, Philip L.	N.D. Ill.	11/8/1933	Confirmed 2/2/1934	1 year, 9 months
Woodburn, William	D. Nev.	9/23/1933	Declined app't	None
Major, James E.	D. Ill.	6/12/1933	Confirmed 1/23/1934	None
HERBERT HOOVER (1929-33)				
Johnson, George E.Q.	N.D. Ill.	8/3/1932	Recess app't expired 3/3/1933 after failed nomination	1 year, 5.5 months
O'Donoghue, Daniel W.	D.D.C.	10/28/1931	Confirmed 1/26/1932	9.5 months
Chestnut, William C.	D. Md.	5/9/1931	Confirmed 1/12/1932	3 days
Soper, Morris A.	4th Cir.	5/6/1931	Confirmed 1/12/1932	1 month
Letts, Fred. D.	D.D.C.	5/5/1931	Confirmed 2/17/1932	1 day
Fee, James A.	D. Ore.	3/18/1931	Confirmed 12/22/1931	10 weeks
Knight, John	W.D.N.Y.	3/18/1931	Confirmed 1/6/1932	13 days
Nordbye, Gunnar H.	D. Minn.	3/18/1931	Confirmed 2/3/1932	9.5 months
Kincheloe, David H.	Customs Ct.	9/22/1930	Confirmed 1/29/1931	None
CALVIN COOLIDGE (1923-29)				
McCarthy, James W.	D.N.J.	10/6/1928	Confirmed 1/8/1929	27 weeks
Borah, Wayne G.	E.D. La.	10/3/1928	Confirmed 12/17/1928	4 months
McVicar, Nelson	W.D. Pa.	9/14/1928	Confirmed 12/17/1928	29 weeks
Bowen, Crate D.	S.D. Fla.	5/31/1928	Declined app't	5.5 months
Vaught, Edgar S.	W.D. Okla.	5/31/1928	Confirmed 1/8/1929	8 days
Moinet, Edward J.	E.D. Mich.	6/13/1927	Confirmed 12/19/1927	14.5 weeks
Letts, Ira L.	D.R.I.	6/9/1927	Confirmed 1/4/1928	None
Adler, Simon L.	W.D.N.Y.	5/19/1927	Confirmed 1/16/1928	11 weeks
Bryant, Frederick H.	N.D.N.Y.	5/19/1927	Confirmed 12/19/1927	11 weeks
Coleman, Frank J.	S.D.N.Y.	5/19/1927	Confirmed 12/19/1927	None
Hand, Augustus N.	2nd Cir.	5/19/1927	Confirmed 1/18/1928	1 month
Coleman, William C.	D. Md.	4/6/1927	Confirmed 12/19/1927	5 weeks
Hayes, Johnson J.	M.D.N.C.	4/6/1927	Confirmed 12/17/1927	2 months
Northcott, Elliott	4th Cir.	4/6/1927	Confirmed 12/15/1927	11 days

Judge	Court	Recess App't Date	Ultimate Action	Vacancy Prior to App't
Tilson, William J.	M.D. Ga.	3/5/1927	Resigned 3/19/1928	5.5 weeks
Tilson, William J.	M.D. Ga.	6/6/1926	Recess app't expired 3/4/1927 after failed nomination	5.5 weeks
Burns, Louis H.	E.D. La.	10/3/1925	Confirmed 12/21/1925	6 weeks
Parker, John J.	4th Cir.	10/3/1925	Confirmed 12/14/1925	15 weeks
Anderson, Harry B.	W.D. Tenn.	9/12/1925	Confirmed 1/29/1926	9 weeks
McCamant, Wallace	9th Cir.	5/25/1925	Recess app't expired 5/2/1925 after failed nomination	None
Clark, William L.	D.N.J.	5/21/1925	Confirmed 12/17/1925	7 weeks
Johnson, Albert W.	M.D. Pa.	5/21/1925	Confirmed 12/17/1925	7.5 weeks
Raymond, Fred M.	W.D. Mich.	5/8/1925	Confirmed 12/18/1925	13 weeks
Henning, Edward J.	S.D. Cal.	4/24/1925	Confirmed 12/15/1925	1 month
Otis, Merrill E.	W.D. Mo.	2/23/1925	Confirmed 12/14/1925	None
Cochran, Ernest F.	E.D.S.C.	11/22/1923	Confirmed 1/21/1924	None
WARREN G. HARDING (1921-23)				
Cant, William A.	D. Minn.	5/21/1923	Confirmed 1/15/1924	None
Inch, Robert A.	E.D.N.Y.	4/28/1923	Confirmed 1/8/1924	4 months
Webster, John S.	E.D. Wash.	4/28/1923	Confirmed 1/6/1924	15.5 weeks
Baker, William E.	N.D. W. Va.	4/4/1921	Confirmed 5/3/1921	8 months
Luse, Claude Z.	W.D. Wis.	4/1/1921	Confirmed 4/27/1921	5.5 months
WOODROW WILSON (1913-21)				
Garrett, Finis J.	W.D. Tenn.	11/22/1920	Recess app't cancelled 12/7/1920	15 weeks
Haight, Thomas G.	3rd Cir.	4/1/1919	Confirmed 6/24/1919	12 weeks
Wilson, James C.	N.D. Tex.	3/5/1919	Confirmed 6/24/1919	1 week
Johnson, Tillman	D. Utah	11/2/1915	Confirmed 1/18/1916	27 weeks
Alschuler, Samuel	7th Cir.	8/16/1915	Confirmed 1/16/1916	3 years, 10 months
Downey, George E.	Ct. Cl.	8/3/1915	Confirmed 1/17/1916	21 weeks
Palmer, Alexander M.	Ct. Cl.	3/16/1915	Resigned 7/22/1915	8 days
Johnson, Joseph T.	W.D.S.C.	3/9/1915	Confirmed 1/24/1916	6 days
Call, Rhydon M.	S.D. Fla.	3/26/1913	Confirmed 4/24/1913	7 months
WILLIAM H. TAFT (1909-13)				
Cheney, John M.	S.D. Fla.	8/26/1912	Recess app't expired 3/3/1913 after failed nomination	None
Howard, Clinton	W.D. Wash.	8/26/1912	Recess app't expired 3/3/1913 after failed nomination	5 weeks
Roberts, Clarence J.	D.N.M.	9/15/1910	Confirmed 12/19/1910	None
Abbott, Edmund C.	D.N.M.	7/5/1910	Recess commission never issued	6 months
Hundley, Oscar R.	N.D. Ala.	3/6/1909	Recess app't expired 5/25/1909	6 weeks
Purdy, Milton D.	D. Minn.	3/6/1909	Resigned 5/1/1909	None
THEODORE ROOSEVELT (1901-09)				
Purdy, Milton D.	D. Minn.	7/6/1908	Recess app't expired 3/3/1909 after failed nomination	None

Judge	Court	Recess App't Date	Ultimate Action	Vacancy Prior to App't
Hundley, Oscar R.	N.D. Ala.	5/30/1908	Recess app't expired 3/3/1909 after failed nomination	6 weeks
Sater, John E.	S.D. Ohio	5/30/1908	Confirmed 3/1/1909	3 weeks
Van Orsdel, Josiah A.	D.C. Cir.	11/14/1907	Confirmed 12/12/1907	4 days
Campbell, Ralph E.	E.D. Okla.	11/11/1907	Confirmed 1/13/1908	5 months
Cotteral, John H.	W.D. Okla.	11/11/1907	Confirmed 1/13/1908	21 weeks
Noyes, Walter C.	2nd Cir.	9/18/1907	Confirmed 12/10/1907	15.5 weeks
Sheppard, William B.	N.D. Fla.	9/4/1907	Confirmed 5/20/1908	2 months
Ward, Henry G.	2nd Cir.	5/18/1907	Confirmed 12/17/1907	10 days
Hundley, Oscar R.	N.D. Ala.	4/9/1907	Recess app't expired 5/30/1908 after failed nomination	6 weeks
Dietrick, Frank S.	D. Idaho	3/19/1907	Confirmed 12/17/1907	18 days
Sater, John E.	S.D. Ohio	3/18/1907	Recess app't expired 5/30/1908 after failed nomination	3 weeks
Van Fleet, William C.	N.D. Cal.	4/2/1907	Confirmed 12/17/1907	2 days
Van Fleet, William C.	N.D. Cal.	3/4/1907	Confirmed 12/17/1907	2 days
Martin, James L.	D. Vt.	10/20/1906	Confirmed 12/11/1906	23 days
Robb, Charles H.	D.D.C.	10/5/1906	Confirmed 12/11/1906	5 days
Buffington, Joseph	3rd Cir.	9/25/1906	Confirmed 12/11/1906	3 months
Ewing, Nathaniel	W.D. Pa.	9/25/1906	Confirmed 12/11/1906	None
Wolverton, Charles E.	D. Ore.	11/20/1905	Confirmed 1/15/1906	27.5 weeks
McComas, Louis E.	D.C. Cir.	6/26/1905	Confirmed 12/6/1905	None
Cotton, William W.	D. Ore.	6/17/1905	Declined app't	5 weeks
Finkelnburg, Gustavus	E.D. Mo.	5/20/1905	Confirmed 12/12/1905	None
Adams, Elmer B.	8th Cir.	5/20/1905	Confirmed 12/12/1905	26 days
Atkinson, George W.	Ct. Cl.	4/15/1905	Confirmed 1/16/1906	5 days
Lanning, William M.	D.N.J.	6/1/1904	Confirmed 12/13/1904	1 month
McClelland, Charles P.	Customs Ct.	8/21/1903	Confirmed 12/8/1903	Unavailable
Ray, George W.	N.D.N.Y.	9/12/1902	Confirmed 12/8/1902	3.5 months
Holmes, Oliver W.	S. Ct.	8/11/1902	Confirmed 12/4/1902	
McDowell, Henry C.	W.D. Va.	11/12/1901	Confirmed 12/18/1901	11 days
Jones, Thomas G.	N.D. Ala. & M.D. Ala.	10/7/1901	Confirmed 12/17/1901	1 week
Adams, George B.	S.D.N.Y.	8/30/1901	Confirmed 12/17/1901	None
WILLIAM McKINLEY (1897-1901)				
Keller, Benjamin F.	S.D. W. Va.	6/18/1901	Confirmed 12/17/1901	5 months
Cochran, Andrew McC.	E.D. Ky.	4/24/1901	Confirmed 12/17/1901	10 weeks
Archbald, Robert W.	M.D. Pa.	3/29/1901	Confirmed 12/17/1901	27 days
Trieber, Jacob	E.D. Ark.	7/26/1900	Confirmed 1/9/1901	19 days
Boyd, James E.	W.D.N.C.	7/11/1900	Confirmed 1/9/1901	2 years
Swayne, Charles	N.D. Fla.	5/17/1889	Confirmed 4/1/1890	28 weeks
Ewart, Hamilton G.	W.D.N.C.	4/13/1899	Recess app't expired 6/7/1900 after failed nomination	None
Gray, George	3rd Cir.	3/29/1899	Confirmed 12/18/1899	5 weeks
Thompson, Albert C.	S.D. Ohio	9/23/1898	Confirmed 12/20/1898	1 day

Judge	Court	Recess App't Date	Ultimate Action	Vacancy Prior to App't
Ewart, Hamilton G.	W.D.N.C.	7/13/1898	Recess app't expired 3/3/1899 after failed nomination	None
Meek, Edward R.	N.D. Tex.	7/13/1898	Confirmed 2/15/1899	5 months
GROVER CLEVELAND (1893-97)				
Rogers, John H.	W.D. Ark.	11/27/1896	Confirmed 12/15/1896	10 days
Kirkpatrick, Andrew	D.N.J.	11/20/1896	Confirmed 12/15/1896	6 weeks
McHugh, William D.	D. Neb.	11/20/1896	Recess app't expired 2/1/1897 after failed nomination	3 weeks
Brown, Arthur L.	D.R.I.	10/15/1896	Confirmed 12/15/1896	11 weeks
Amidon, Charles F.	D.N.D.	8/31/1896	Confirmed 2/18/1897	52 days
Carland, John E.	D.S.D.	8/31/1896	Confirmed 12/15/1896	3 weeks
Adams, Elmer B.	E.D. Mo.	5/17/1895	Confirmed 12/9/1895	None
BENJAMIN HARRISON (1889-93)				
Morrow, William W.	N.D. Cal.	9/18/1891	Confirmed 1/11/1892	5.5 weeks
Woolson, John S.	S.D. Iowa	8/4/1891	Confirmed 1/11/1892	6 weeks
Niles, Henry C.	S.D. Miss. & N.D. Miss.	8/11/1891	Confirmed 1/11/1892	10 days
Beatty, James H.	D. Idaho	3/7/1891	Confirmed 2/4/1892	7 months
Edgerton, Alonzo J.	D.S.D.	11/19/1889	Confirmed 1/16/1890	9 months
Green, Edward T.	D.N.J.	10/24/1889	Confirmed 1/27/1890	8 months
Ricks, Augustus J.	N.D. Ohio	7/1/1889	Confirmed 1/16/1890	1 month
GROVER CLEVELAND (1885-89)				
Lacombe, Emile H.	2nd Cir.	5/26/1887	Confirmed 3/28/1888	12 weeks
Allen, William J.	S.D. Ill.	4/18/1887	Confirmed 1/19/1888	22 days
Simonton, Charles H.	D.S.C.	9/3/1886	Confirmed 1/13/1887	None
Newman, William T.	N.D. Ga.	8/13/1886	Confirmed 1/13/1887	2 weeks
Merrick, William M.	D.D.C.	5/1/1885	Confirmed 3/30/1886	1 day
CHESTER ARTHUR (1881-85)				
Gresham, Walter Q.	7th Cir.	10/28/1884	Confirmed 12/9/1884	3.5 months
Weldon, Lawrence	Ct. Cl.	11/24/1883	Confirmed 12/18/1883	19 days
Woods, William A.	D. Ind.	5/2/1883	Confirmed 1/7/1884	1 month
Sage, George R.	S.D. Ohio	3/20/1883	Confirmed 1/7/1884	8 days
JAMES A. GARFIELD (1881)				
Brown, Addison	S.D.N.Y.	6/2/1881	Confirmed 10/14/1881	None
Boorman, Alexander	W.D. La.	5/18/1881	Confirmed	11 weeks
RUTHERFORD B. HAYES (1877-81)				
Turner, Ezekiel B.	W.D. Tex.	11/18/1880	Confirmed 12/20/1880	Unavailable
Hays, William H.	D. Ky.	9/6/1879	Confirmed 12/10/1879	39 days
Harlan, John M.	S. Ct.	3/29/1877	Confirmed 11/29/1877	
ULYSSES S. GRANT (1869-77)				
Johnson, Alexander S.	2nd Cir.	10/25/1875	Confirmed 12/15/1875	6.5 weeks
Welker, Martin	N.D. Ohio	11/25/1873	Confirmed 12/8/1873	None
Shipman, Nathaniel	D. Conn.	4/16/1873	Confirmed 12/8/1873	2 days
McKinney, John M.	S.D. Fla.	11/8/1870	Confirmed 2/18/1871	Unavailable
Winch, Joel C.C.	E.D. Tex.	10/11/1870	Recess app't expired 3/3/1871 after failed nomination	1 year, 9 months

Judge	Court	Recess App't Date	Ultimate Action	Vacancy Prior to App't
Knowles, John P.	D.R.I.	10/9/1869	Confirmed 1/24/1870	1 month
Clarke, James M.	D.R.I.	9/15/1869	Declined app't	4 months
Gresham, Walter Q.	D. Ind.	9/1/1869	Confirmed 12/22/1869	1 week
ANDREW JOHNSON (1865-69)				
Blatchford, Samuel	S.D.N.Y.	5/3/1867	Confirmed 7/16/1867	None
Brooks, George W.	E.D.N.C.	8/19/1865	Confirmed 1/22/1866	Unavailable
Erskine, John	S.D. Ga.	7/10/1865	Confirmed 1/22/1866	Unavailable
Dick, Robert P.	W.D.N.C.	5/29/1865	Declined app't	Unavailable
ABRAHAM LINCOLN (1861-65)				
Busteed, Richard	D. Ala.	11/17/1863	Confirmed 1/20/1864	2 years, 10 months
Boynton, Thomas J.	S.D. Fla.	10/19/1863	Confirmed 1/20/1864	16 weeks
DeLahay, Mark W.	D. Kan.	10/6/1863	Confirmed 3/15/1864	1 month
Lawrence, William	S.D. Fla.	9/9/1863	Declined app't	Unavailable
Bingham, John A.	S.D. Fla.	6/4/1863	Recess app't expired 7/4/1864	Unavailable
Durell, Edward H.	E.D. La.	5/20/1863	Confirmed 2/17/1864	16 weeks
Underwood, John C.	E.D. Va.	3/27/1863	Confirmed 11/25/1864	1 year, 11 months
Davis, David	S. Ct.	10/17/1862	Confirmed 12/8/1862	6.5 months
Ballard, Bland	D. Ky.	10/16/1861	Confirmed 1/22/1862	Unavailable
Casey, Joseph	Ct. Cl.	5/23/1861	Confirmed 7/22/1861	Unavailable
JAMES BUCHANAN (1857-61)				
Jones, William G.	S.D. Ala. & N.D. Ala. & M.D. Ala.	9/29/1859	Confirmed 1/30/1860	2 months
FRANKLIN PIERCE (1853-57)				
Hopkins, George W.	D.C. Cir.	10/5/1855	Recess app't expired 8/30/1856	Unavailable
Love, James M.	S.D. Iowa	10/5/1855	Confirmed 2/25/1856	1 month
Scarburgh, George P.	Ct. Cl.	5/8/1855	Recess app't expired 8/30/1856	Unavailable
Giles, William F.	D. Md.	7/18/1853	Confirmed 1/11/1854	10 days
MILLARD FILLMORE (1850-53)				
Curtis, Benjamin R.	S. Ct.	9/22/1851	Confirmed 12/20/1851	18 days
ZACHARY TAYLOR (1849-50)				
Ringo, Daniel	D. Ark.	11/5/1849	Confirmed 5/10/1850	Unavailable
Boyce, Henry	W.D. La.	5/9/1849	Confirmed 8/2/1850	Unavailable
JAMES POLK (1845-49)				
Dunlop, James	D.C. Cir.	10/3/1845	Confirmed 2/3/1846	5 weeks
Woodbury, Levi	S. Ct.	9/20/1845	Confirmed 1/3/1846	10 days
JOHN TYLER (1841-45)				
NONE				
WILLIAM HENRY HARRISON (1841)				
NONE				
MARTIN VAN BUREN (1837-41)				
Gilchrist, Robert B.	D.S.C.	10/30/1839	Confirmed 2/17/1840	1 week
Nicoll, John C.	D. Ga.	5/11/1839	Confirmed 2/17/1840	4 days
McKinley, John	S. Ct.	4/22/1837	Confirmed 9/25/1837	7 weeks
ANDREW JACKSON (1829-37)				

Judge	Court	Recess App't Date	Ultimate Action	Vacancy Prior to App't
Holman, Jesse L.	D. Ind.	9/16/1835	Confirmed 3/29/1836	9.5 weeks
Tappan, Benjamin	D. Ohio	10/12/1833	Recess app't expired 5/29/1834 after failed nomination	18 days
Irwin, Thomas	W.D. Pa.	4/14/1831	Confirmed 3/21/1832	Unavailable
Harvey, Mathew	D.N.H.	11/2/1830	Confirmed 12/16/1830	3 months
Barbour, Phillip P.	E.D. Va.	10/8/1830	Confirmed 12/16/1830	17 days
JOHN QUINCY ADAMS (1825-29)				
Creighton, William, Jr.	D. Ohio	11/1/1828	Recess app't expired 2/16/1829 after failed nomination	11 weeks
Hopkinson, Joseph	E.D. Pa.	10/23/1828	Confirmed 2/23/1829	Unavailable
Rossell, William	D.N.J.	11/10/1826	Confirmed 12/19/1826	6.5 weeks
Boyle, John	D. Ky.	10/20/1826	Confirmed 2/12/1827	5.5 months
Conkling, Alfred	N.D.N.Y.	8/27/1825	Confirmed 12/14/1825	8 months
Hay, George	E.D. Va.	7/5/1825	Confirmed 3/31/1826	3 months
JAMES MONROE (1817-25)				
Glenn, Elias	D. Md.	8/31/1824	Confirmed 1/3/1825	11 weeks
Pitman, John	D.R.I.	8/4/1824	Confirmed 1/3/1825	Unavailable
Thompson, Smith	S. Ct.	9/1/1823	Confirmed 12/19/1823	5.5 months
Randolph, Peter	D. Miss.	6/25/1823	Confirmed 12/9/1823	Unavailable
Hall, Willard	D. Del.	5/6/1823	Confirmed 12/9/1823	13 days
Cuyler, Jeremiah	D. Ga.	6/12/1821	Confirmed 1/10/1822	None
Charlton, Thomas U.P.	D. Ga.	5/15/1821	Unavailable	Unavailable
Skinner, Roger	N.D.N.Y.	11/24/1819	Confirmed 1/5/1820	Unavailable
Bland, Theodorick	D. Md.	11/23/1819	Confirmed 1/5/1820	5 months
JAMES MADISON (1809-17)				
Pennington, William S.	D.N.J.	6/19/1815	Confirmed 1/16/1816	7 weeks
Gaillard, Theodore	D. La.	4/13/1813	Unavailable	Unavailable
THOMAS JEFFERSON (1801-09)				
Livingston, Henry B.	S. Ct.	11/10/1806	Confirmed 12/17/1806	2 months
Tallmadge, Matthias B.	N.D.N.Y.	6/12/1805	Confirmed 1/17/1806	4.5 months
Livingston, Henry B.	D.N.Y.	5/16/1805	Recess app't expired 4/21/1806	Unavailable
Stephens, William	D. Ga.	10/22/1801	Confirmed 1/26/1802	Unavailable
Hall, Dominick A.	5th Cir.	7/1/1801	Confirmed 1/26/1802	4.5 months
Gaillard, Theodore	5th Cir.	5/30/1801	Unavailable	Unavailable
Potter, Henry	5th Cir.	5/9/1801	Confirmed 1/26/1802	12 weeks
Barnes, David L.	D.R.I.	4/30/1801	Confirmed 1/26/1802	10 weeks
Kilty, William	D.C. Cir.	3/23/1801	Confirmed 1/26/1802	None
JOHN ADAMS (1797-1801)				
Winchester, James	D. Md.	10/31/1799	Confirmed 12/10/1799	8 days
Moore, Alfred	S. Ct.	10/20/1799	Confirmed 12/10/1799	Unavailable
Washington, Bushrod	S. Ct.	9/29/1798	Confirmed 12/20/1798	5.5 weeks
GEORGE WASHINGTON (1789-97)				
Bourne, Benjamin	D.R.I.	10/13/1796	Confirmed 12/22/1796	6 weeks
Clay, Joseph, Jr.	D. Ga.	9/16/1796	Confirmed 1/2/1797	Unavailable
Rutledge, John	S. Ct.	7/1/1795	Recess app't expired 12/15/1795 after failed nomination	2 days

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Hitchcock, Samuel	D. Vt.	9/3/1793	Confirmed 1/28/1794	Unavailable
Johnson, Thomas	S. Ct.	8/5/1791	Confirmed 11/7/1791	5 months
Lewis, William	D. Pa.	7/14/1791	Confirmed 11/7/1791	9 weeks
Morris, Robert	D.N.J.	8/28/1790	Confirmed 12/20/1790	12 days
Paca, William	D. Md.	12/22/1789	Confirmed 2/10/1790	Unavailable
Griffin, Cyrus	D. Va.	11/28/1789	Confirmed 2/10/1790	9 weeks