



Going to Extremes:

*The Supreme Court and Senate Republicans' Unprecedented
Record of Obstruction of President Obama's Nominees*



Prepared by the Office of Senator Elizabeth Warren

Executive Summary

Considering the nomination of a Justice to fill a vacancy on the nation's highest court is one of the most solemn and consequential tasks performed by the U.S. Senate. The obligation to provide "Advice and Consent" is spelled out in the Constitution itself, as is the President's obligation to select a nominee. The Constitution does not provide for exceptions to that duty.

On March 16, 2016, President Obama met his constitutional duty when he nominated Judge Merrick Garland to fill the vacant seat on the Supreme Court. Even before the President announced his candidate to serve on the Court, however, Senate Republicans declared that they would not carry out their constitutional obligation under any circumstances, no matter who was nominated to fill the vacant seat. They would hold no hearings; they would allow no confirmation vote; many would not even agree to meet with Judge Garland or any other candidate nominated by President Obama. Put simply, they said they would not do their job.

It was an unprecedented position, but it was only the latest example of Senate Republicans' overall approach to Obama administration nominees. For seven years, Senate Republicans have delayed or blocked votes on key nominations, including district and circuit court judges, key regulators, and foreign policy and national security officials.

This report examines the context of Senate Republican opposition to the nomination of Judge Garland to the Supreme Court, documenting its place in the long and troubling history of the Republicans' many other efforts to block President Obama's judicial and executive branch nominations.

Senate Republicans' record of obstruction under President Obama is unique in both its scope and intensity. They have waged an unrelenting campaign to keep key positions throughout government empty as long as possible. Instead of working to make government function more efficiently, Senate Republicans have made it their priority to undermine President Obama and to hamstring efforts to protect consumers and workers, to hold large corporations accountable, and to promote equality.

This refusal to carry out the basic tasks of government—including the timely confirmation of public servants—has created a breeding ground for new and dangerous Republican extremism. By advancing the idea that Senators sworn to uphold the Constitution can simply decide not to do their job for political reasons, they encourage ever more outrageous behavior from other Republican leaders. Now Republicans compete to demonstrate their own willingness to disrupt the effective functioning of our government. This extremism is on display daily in the 2016 presidential campaign, but its origins are firmly rooted in the sustained efforts of Senate Republicans to reject President Obama's legitimacy and to abuse Senate rules in an all-out effort to cripple the government under his leadership.

Senate Republicans are in a unique position to stand up to those in their own party who are determined to undermine the basic functioning of our government. They can stop the rising tide of Republican extremism that threatens to swamp both their party and this nation. And they can respect their oath of office to support and defend the Constitution, and put that oath ahead of petty partisan politics. Senate Republicans should have stood up to this extremism years ago—but it is not too late to do so now. It just takes some political courage.

Republican Senators Refuse to Do Their Job on Supreme Court Nomination

"Refusing to Consider Any Nominee... is a Direct Repudiation of Your Constitutional Duties"¹

"Barely an hour after the news broke"² of the death of Supreme Court Justice Antonin Scalia on February 13, 2016, Senate Majority Leader Mitch McConnell (R-KY) released a statement arguing that "this vacancy should not be filled until we have a new President."³ At a Republican presidential debate later that evening, every single candidate on the stage agreed that President Obama should not nominate a candidate to serve on the Court.⁴

Senate Republicans' stance represents a failure to fulfill their constitutional responsibilities. All U.S. Senators entering office take an oath to "support and defend the Constitution of the United States against all enemies, foreign and domestic; ...bear true faith and allegiance

to the same ... and faithfully discharge the duties of the office on which I am about to enter.”⁵ Put simply, Senators promise to do the job their constituents elected them to do.

That job includes considering nominees to the Supreme Court. Article II, Section 2 of the Constitution states that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Judges of the [S]upreme Court.”⁶ And throughout our history, Senators have done that job, regardless of partisan background or the timing of the vacancy. The first Senate votes on Supreme Court nominees came with the Court’s founding in 1789; the Senate has confirmed a total of 124 Supreme Court justices between 1789 and 2010.⁷ Indeed, as Table 1 shows, in the 20th century alone the Senate confirmed half a dozen Supreme Court Justices during presidential election years.⁸ Most recently, Justice Anthony Kennedy—nominated by Republican President Ronald Reagan—was confirmed unanimously by a Democratic Senate in 1988.⁹

Table 1. Supreme Court Nominees Confirmed During a Presidential Election Year, 1900-Present

Administration	Nominee	Date Nominated	Date Confirmed
Ronald Reagan	Anthony Kennedy	November 30, 1987	February 3, 1988
Franklin Roosevelt	Frank Murphy	January 4, 1940	January 16, 1940
Herbert Hoover	Benjamin Cardozo	February 15, 1932	February 24, 1932
Woodrow Wilson	John Clarke	July 14, 1916	July 24, 1916
Woodrow Wilson	Louis Brandeis	January 28, 1916	June 1, 1916
William Taft	Mahlon Pitney	February 19, 1912	March 13, 1912

Source: Supreme Court Nominations, present-1789, www.senate.gov

In the modern era, consideration by the Senate Judiciary Committee has been essential to the confirmation process, including “three distinct stages—(1) a pre-hearing investigative stage, followed by (2) public hearings, and concluding with (3) a committee decision as to whether to recommend approval of the nomination by the full Senate.”¹⁰ The Committee held its first open confirmation hearings on a Supreme Court nominee in 1916.¹¹ Since 1949, when public Senate Judiciary Committee hearings on Supreme Court nominees became “routine,” every nominee whose name was not withdrawn from consideration in advance has had a hearing before the Committee, within an average of about a month following formal nomination.¹²

Even where a majority of the Judiciary Committee did not support a Supreme Court nominee, it has been the long-standing practice to advance the nominee to the floor, to ensure the full Senate had the opportunity to provide advice and consent on these critical nominations. As then-Republican Leader Sen. Trent Lott (R-MS) said in a 2001 floor speech: “No matter what the vote in committee on a Supreme Court nominee, it is the precedent of the Senate that the individual nominated is given a vote by the whole Senate.”¹³

A chorus of voices agrees that the Constitution requires the Senate to give any Supreme Court nominee full and fair consideration. A group of Constitutional law scholars wrote that “the Senate has the duty to ‘advise and consent,’ which means to hold hearings and to vote on the nominee. ... [F]or the Senate not to consider a nominee until after the next president is inaugurated would be unprecedented and would leave a vacancy that would undermine the ability of the Supreme Court to carry out its constitutional duties.”¹⁴

43 current and former law school deans from across the country wrote that “we read Article II, Section 2 of the Constitution as directing action without qualification: the President ‘shall nominate, and by and with the Advice and Consent of the Senate, shall appoint... judges of the Supreme Court.’”¹⁵ And 82 organizations—including civil rights, religious, labor, legal services, women’s rights, and LGBT advocacy groups—wrote Senate Judiciary Committee Republican members that “your unprecedented and destructive refusal to give fair consideration to any Supreme Court nomination until after the next President is sworn into office” and “[r]efusing to consider any nominee, without due evaluation of his or her merits, credentials, and experiences, is a direct repudiation of your constitutional duties.”¹⁶

Since his initial announcement, Senate Majority Leader Mitch McConnell (R-KY) has made plain that his own views on the Court have a great deal to do with the current occupant of the Oval Office, not the “people’s” selection of the next one this Fall. On the Hugh Hewitt Show, McConnell said, “I assure you the Senate will not act on a nominee by Barack Obama.”¹⁷

Appearing on Meet the Press in March 2016, McConnell told viewers that “[t]he Senate’s not doing

nothing during this election season. But we're not giving [a] lifetime appointment to this president on the way out the door to change the Supreme Court for the next 25 or 30 years."¹⁸

McConnell cited the new Republican Majority in the Senate as the sole reason that the Garland nomination has been stalled, saying in a recent interview that "when people say what difference does it make that we elected a Republican majority, I have a two-word answer: Supreme Court. Without this Republican majority, Garland would be confirmed."¹⁹ Scholars Thomas Mann and Norman Ornstein wrote that the Republican refusal to consider any nominee not only "trashed long-standing precedents" but "continu[ed] to fan the flames of hatred of Obama."²⁰ *Politico* called the Republican Supreme Court blockade "an historic rebuke of President Obama's authority."²¹

**"The president of the United States
is Barack Obama, whether ...
Senate Republicans like it or not."²²**

In the days leading up to the 2010 elections, McConnell memorably told *National Journal* that "[t]he single most important thing we want to achieve is for President Obama to be a one-term president."²³ Having failed in this goal, Senate Republicans are now trying to deny the President his right to fully execute the powers the Constitution has vested in him for the remainder of his term by denying Judge Garland the hearing and vote that Supreme Court nominees have historically received since hearings became routine.

Senate Republicans' refusal to do their jobs has prompted wide and vociferous outrage across the country. "Voters have had their say," the South Carolina paper *The Greenville News* editorialized. "Obama was fairly elected. Twice. The Constitution allows him at any time in his term to nominate a Supreme Court justice to fill a vacancy. ... No president should have his hands tied in the last 10 months of his term simply because it is an election year."²⁴ *The Toledo Blade* wrote: "The Senate can vote a nomination down. But not to even hear the President's nominee? The President still has almost 9 months to serve and this nominee is the epitome of prudence, balance, and qualification."²⁵

In an op-ed for the *Chicago Tribune*, University of Chicago law professor Geoffrey R. Stone wrote that "[t]he president of the United States is Barack Obama, whether McConnell, Grassley and other Senate Republicans like it or not."²⁶ And Marquette University Law School professor Ed Fallon wrote in an op-ed for the *Milwaukee Journal Sentinel* that "Senate Republicans must uphold the oath that they took when they were sworn in—an oath to uphold the Constitution—and end their obstruction of Obama's power to nominate a Supreme Court justice."²⁷

The New York Times in a February editorial summed the circumstances this way: "[A]fter nearly eight years of doing little besides trying to thwart Mr. Obama, it is disturbingly likely that Mitch McConnell, the Senate majority leader and architect of the just-say-no approach, will lead his colleagues in keeping Justice Scalia's seat open, and the highest court in the land essentially paralyzed, in the hope that one of the hard-right Republicans running for the presidency will win."²⁸

As the *Times* wrote, the Republican Supreme Court blockade is just the most recent, most egregious event in years of obstruction of the Obama administration by the Republican Party. Since the beginning days of the Obama administration, Senate Republicans have worked to delay or block votes on confirming government officials across the board, leaving positions across the judicial and executive branches vacant and hamstringing the government's ability to fully exercise its responsibilities on behalf of the American people.

Republican Senators Have Consistently Blocked President Obama's Judicial Nominees

The President has the responsibility to nominate judges to federal district and circuit courts. However, as a result of Republican obstruction, fewer of President Obama's first-term nominees to U.S. district and circuit courts were confirmed by the Senate, and these nominees were confirmed more slowly, than the nominees of other presidents in recent decades. It took a change to Senate rules under Democratic leadership in 2013—eliminating the filibuster for lower court nominees—to start the wheels of the judicial confirmation process turning again. And when Republicans regained control of the Senate in 2015, confirmations slowed to a snail's pace.

In Obama's First Term, Nominees Moved More Slowly and Fewer Nominees Were Confirmed

Senate Republicans, in the minority during Obama's first term, sent an early signal that Obama administration judicial nominees would face an uphill climb when they filibustered the President's very first judicial nominee, David Hamilton of Indiana, despite support from then-home state Sen. Richard Lugar (R-IN). Longtime court-watcher Nina Totenberg of National Public Radio, reporting on the Hamilton cloture vote in November 2009, wrote that in Obama's first year in office:

"Republicans have artfully dragged their feet on judicial nominations. The first two appeals court nominees to be confirmed this fall were so uncontroversial that each was easily approved by a bipartisan vote in the Senate Judiciary Committee. Yet each waited months for a vote by the full Senate because Republicans blocked floor action."²⁹

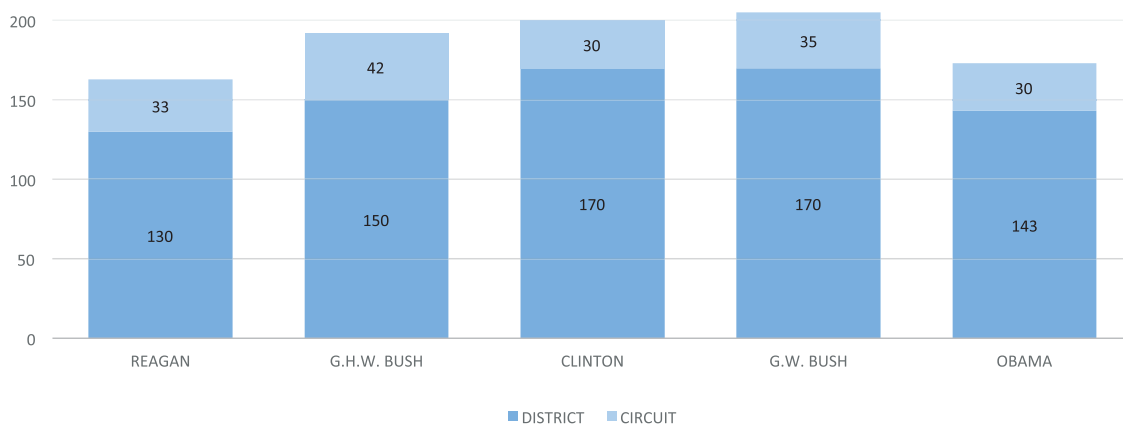
A report by Alliance for Justice further details the delay tactics employed by Senate Republicans to block judicial nominees in the early years of the Obama presidency, including "secret holds" and forced cloture votes. The report concluded that "In sum, Republicans have a sustained record of using [S]enate procedure to block even uncontroversial nominees throughout the Obama presidency."³⁰

As a result of these tactics, in his first term as President, President Obama saw fewer total circuit and district court nominees confirmed than in the first term of the past three Presidents. Overall, as Figure 1 shows, only 173 of President Obama's first-term district and circuit court nominees were confirmed—compared to 205 for President George W. Bush, 200 for President Bill Clinton, and 192 for President George H.W. Bush.³¹

Even more notably, the amount of time it took for nominees to move through the confirmation process from start to finish grew dramatically in Obama's first term. A September 2012 Congressional Research Service (CRS) report found that during the Obama administration, for the first time, a majority of judicial nominees that were both reported by the Senate Judiciary Committee and confirmed by the full Senate unanimously or overwhelmingly waited 200 or more days from first nomination to confirmation. Virtually none had been confirmed in 100 days or less, which used to be the norm. Indeed, the data in Figures 2 and 3 show a complete reversal from the Reagan administration, when almost no uncontroversial nominees took longer than 100 days to confirm; in President Obama's first term, almost none took *fewer* than 100 days.³²

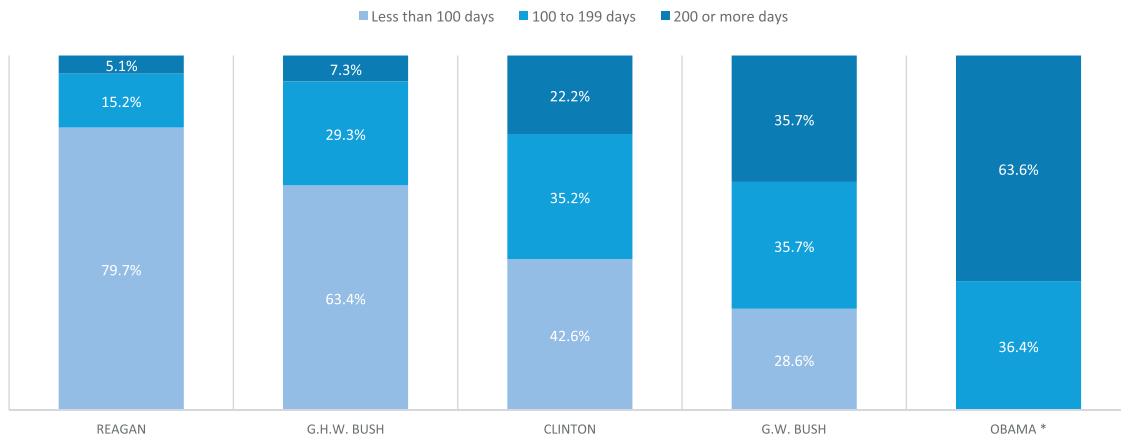
In 2013, Republican leaders flatly rejected President Obama's authority to confirm any judges to fill any of three open seats on the second-highest court in the country, filibustering the nominations of Patricia

FIGURE 1. U.S. CIRCUIT AND DISTRICT COURT NOMINEES CONFIRMED DURING FIRST TERM



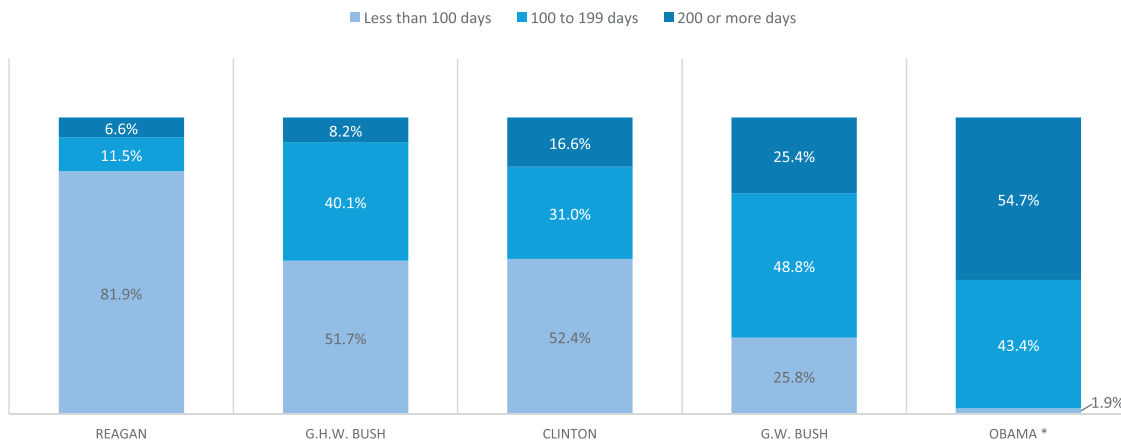
SOURCE: "PRESIDENT OBAMA'S FIRST-TERM U.S. CIRCUIT AND DISTRICT COURT NOMINATIONS: AN ANALYSIS AND COMPARISON WITH PRESIDENTS SINCE REAGAN," CONGRESSIONAL RESEARCH SERVICE, 5/2/13; SEE TABLE 2

FIGURE 2. PERCENTAGE OF UNCONTROVERSIAL CIRCUIT COURT NOMINEES WAITING SPECIFIED TIMES FROM FIRST NOMINATION TO CONFIRMATION (1981-2012)



SOURCE: TABLE 1, "LENGTH OF TIME FROM NOMINATION TO CONFIRMATION FOR "UNCONTROVERSIAL" U.S. CIRCUIT AND DISTRICT COURT NOMINEES: DETAILED ANALYSIS," CRS, 9/18/12. DATA FOR OBAMA ADMINISTRATION IS CURRENT AS OF SEPTEMBER 14, 2012.

FIGURE 3. PERCENTAGE OF UNCONTROVERSIAL DISTRICT COURT NOMINEES WAITING SPECIFIED TIMES FROM FIRST NOMINATION TO CONFIRMATION (1981-2012)



SOURCE: TABLE 2, "LENGTH OF TIME FROM NOMINATION TO CONFIRMATION FOR "UNCONTROVERSIAL" U.S. CIRCUIT AND DISTRICT COURT NOMINEES: DETAILED ANALYSIS," CRS, 9/18/12. DATA FOR OBAMA ADMINISTRATION IS CURRENT AS OF SEPTEMBER 14, 2012.

Millet, Cornelia Pillard, and Robert Wilkins to the D.C. Circuit Court of Appeals. At the time, the D.C. Circuit had four judges appointed by Republicans and four appointed by Democrats.³³ Senator John Cornyn (R-TX), a Senate Judiciary Committee member and a member of Republican Senate leadership, wrote in an op-ed for Fox News that Republicans did not want to "switch the majority" of the influential D.C. Circuit Court.³⁴ Senator Grassley introduced legislation, the

"Court Efficiency Act" (S. 699), which would have stripped these three seats from the D.C. Circuit Court altogether rather than let President Obama appoint judges to fill the vacancies.³⁵

To break through the mounting gridlock and ensure qualified nominees could get an up-or-down vote, Senate Democrats were forced in late 2013 to eliminate the 60-vote threshold previously necessary to overcome

filibusters for nominees other than to the Supreme Court.³⁶ By that time, “nearly 3 in 10 of all cloture motions filed in the history of the Senate were filed during McConnell’s tenure as Minority Leader.”³⁷ The next year the Senate confirmed 12 circuit court judges and 77 district court judges.³⁸

Back in the Majority, Republicans Slowed Judicial Confirmations Even More

Once Republicans took over the Senate in 2015, however, judicial confirmations nearly ground to a halt. Republicans confirmed only 11 judges in 2015, the fewest since 1969.³⁹ In a mid-year story titled “GOP blocks dozens of Obama court picks,” *Politico* described the Republican majority’s track record as “a dramatic escalation of the long-running partisan feud over the ideological makeup of federal courts.”⁴⁰ Alliance for Justice released a report in September 2015 that found that “After more than eight months of majority control, Senate Republicans have all but abandoned their constitutional duty to confirm federal judges. Instead, they have engineered a politically motivated vacancy crisis, striving to preserve judicial vacancies for a future Republican president to fill.”⁴¹

Early in 2016, after the Senate confirmed Judge Luis Felipe Restrepo to serve on the Third Circuit Court of Appeals, the conservative group Heritage Action called on Republicans to put a “near-complete stop to the confirmation process.” *Politico* observed that “[s]ince 1993, the Senate has never confirmed fewer than 50 judges during a two-year session of Congress ... according to CRS, but if McConnell continues his current confirmation pace he may barely scratch half that.”⁴² And to date, Senate Republicans have allowed the confirmation of only 18 judges. In sharp contrast, in the final two years of President George W. Bush’s administration, Senate Democrats confirmed 68 judges. At the rate Senate Republicans are moving judges, they will not come anywhere close to that number.⁴³ Worse, judicial vacancies have risen dramatically, from 43 to 89, since Senate Republicans took over the majority in 2015. At this same point in the George W. Bush administration, there were only 47 vacancies.⁴⁴ According to Alliance for Justice, Senate Republicans are “on pace for the lowest number of judicial confirmations in more than 60 years.”⁴⁵

Republicans Have Also Consistently Blocked Executive Nominees

And it’s not just judges. Senate Republicans have used the same strategy to frustrate the confirmation of executive branch positions as well. Over 1,200 agency positions require Senate confirmation, and each year presidents nominate hundreds of people to serve in these positions.⁴⁶ Since the start of the Obama administration, Senate Republicans have stalled—and, in some cases, halted altogether—the confirmation process for agency officials, leaving unfilled positions that are central to the proper functioning of government.

As with judicial nominations, Senate Republicans used cloture motions to stall non-judicial nominations during President Obama’s first six years in office, when Senate Republicans were in the minority. From 1980—when cloture was first invoked on a non-judicial nominee—until the filibuster rules were amended in November 2013, cloture motions were filed on 79 non-judicial nominees.⁴⁷ Forty-three of those candidates—or 54 percent—were nominated during the Obama administration.⁴⁸ Put another way, there were more cloture attempts on non-judicial nominees during President Obama’s first six years in office than in the 28 years preceding the Obama administration.

Senate Republicans have put politics ahead of the public interest, blocking nominees from taking on critical roles running the agencies that help keep Americans safe at home and abroad and protect workers and consumers. Examples of executive branch nominees who have suffered lengthy confirmation delays as a result of Republican obstruction include:

- ♦ **Loretta Lynch, Attorney General:** Attorney General Loretta Lynch waited 166 days for her Senate confirmation in April 2015.⁴⁹ Since 1789, only two Attorneys General have had longer waits.⁵⁰
- ♦ **Adam Szubin, Acting Treasury Undersecretary for Terrorism and Financial Crimes** (nomination pending at the Senate): Senate Republicans continue to delay the confirmation of Adam Szubin, nominated by President Obama in April 2015 to serve as

Treasury Undersecretary for Terrorism and Financial Crimes, a position that is an essential part of the nation's effort to prevent and defeat national security threats at home and abroad. It took the Banking Committee 325 days to hold a vote on Szubin's nomination, and Szubin is still waiting to receive full Senate confirmation.⁵¹ When asked about the numerous nominations sitting in his committee in January 2016 (discussed below), including that of Szubin, Senate Banking Committee Chairman Richard Shelby explained that he was "in no hurry" to hold hearings on the nominees because he was "in a primary."⁵²

- ♦ **Chuck Hagel, Former Secretary of Defense:** Senate Republicans filibustered the nomination of former Republican Sen. Chuck Hagel (R-NE) to serve as President Obama's Secretary of Defense. The first-ever Defense Secretary to face a filibuster, Secretary Hagel was confirmed by a narrow vote after a "bruising struggle with Republicans" in which "Republicans in the Senate, joined by an array of conservative activists, waged an all-out campaign to discredit Hagel, digging into his financial records for evidence that he was paid by anti-American groups and scouring his old speeches for signs that he was hostile to Israel." *The New York Times* reported that "Those efforts produced little, forcing Republicans to acquiesce after filibustering his nomination in an initial vote" in February 2013."⁵³
- ♦ **Thomas Perez, Secretary of Labor:** It took 121 days for Thomas Perez to be confirmed as the Secretary of Labor in July 2013.⁵⁴ Senate Republicans allowed a vote on his nomination only after Senate Democrats threatened to eliminate the filibuster for lower court nominees.⁵⁵
- ♦ **Members of the National Labor Relations Board (NLRB):** Senate Republicans actively worked to paralyze the NLRB by blocking President Obama's nominees to serve on the Board, which helps resolve disputes between employees and their employers and oversees public sector unions. In July 2013, Majority Leader Reid helped finalize a deal with

Senate Republicans that paved the way for confirmation of all five Board members to the NLRB, marking the first time in over 10 years that the Board had a full complement of Senate-confirmed members.⁵⁶

- ♦ **Gina McCarthy, Administrator of the Environmental Protection Agency:** Gina McCarthy waited a record 136 days to receive Senate confirmation in July 2013—longer than any of her 12 predecessors.⁵⁷ Her nomination also went through only after Senate Democrats threatened to change the filibuster rules.⁵⁸
- ♦ **Richard Cordray, Director of the Consumer Financial Protection Bureau (CFPB):** Despite his unique qualifications—having served as Attorney General, Treasurer, and Solicitor General for Ohio—Senate Republicans launched a campaign to destroy Director Cordray's nomination in an effort to dismantle the CFPB, the agency that protects consumers from predatory financial products and services.⁵⁹ Director Cordray waited for nearly two years to be confirmed.⁶⁰ He was among the nominees who were confirmed after Democrats warned Republicans that they were prepared to eliminate the filibuster for lower court nominees.⁶¹
- ♦ **Melvin Luther "Mel" Watt, Director of the Federal Housing Finance Agency (FHFA):** Although the country was still recovering from the housing crisis, Senate Republicans blocked the nomination of then-Congressman Mel Watt (D-NC) to lead the FHFA, which helps to identify and minimize risks in the mortgage market. Senate Republicans used the threat of a filibuster to hold his nomination hostage, and he was confirmed—seven months after his nomination—only after the filibuster rules were changed.⁶² Director Watt was the first sitting member of Congress since 1843—and the second in the country's history—to have been filibustered.⁶³
- ♦ **Gayle Smith, Administrator of the United States Agency for International Development (USAID):** Republicans also blocked the confirmation of Gayle Smith, a founder of the

Enough Project, an organization that works to end genocide and crimes against humanity, and a former journalist. President Obama nominated Smith to lead the USAID on April 30, 2015. She was not confirmed for seven months.⁶⁴ Senators in both parties supported her nomination, confirming her by a vote of 79 to 7.⁶⁵

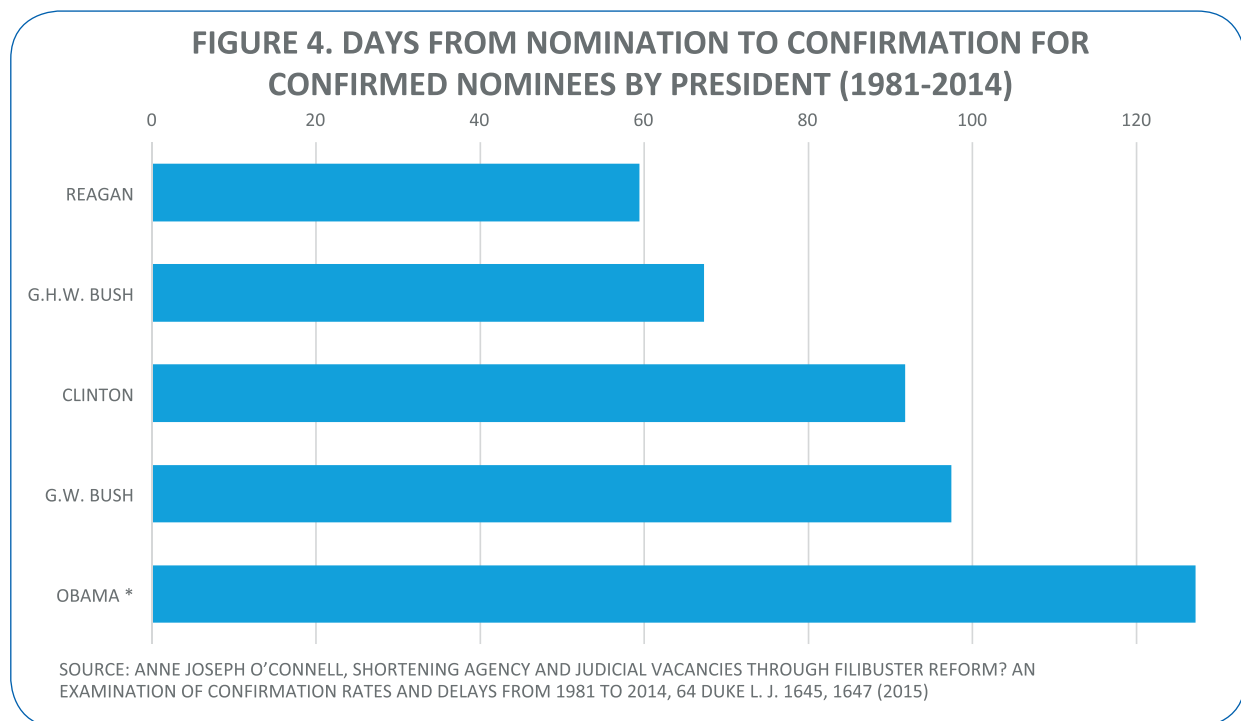
- ♦ **Sam Heins, U.S. Ambassador to Norway:** It took 274 days for the Senate to confirm Sam Heins. The Senate confirmed him by voice vote.⁶⁶
- ♦ **Azita Raji, U.S. Ambassador to Sweden:** Azita Raji waited 400 days for the Senate to confirm her nomination. She was also confirmed by voice vote.⁶⁷

While Senate Republicans have slowed the nomination process across the board, Senate Banking Committee Chairman Richard Shelby has been notably flagrant in his disregard for the nominations process. Since 2015, not one of the 19 nominees that have been sent to the Banking Committee in the current Congress has received Senate confirmation. Only half have even been considered.⁶⁸ Among

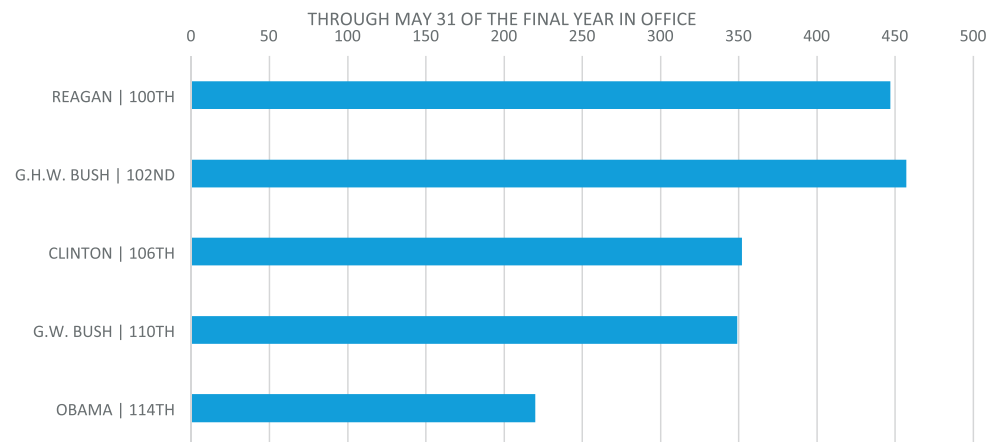
these candidates are Adam Szubin, discussed above, and John Mark McWatters, who was nominated in January 2016 to serve on the board of the Export-Import Bank. While Chairman Shelby allowed a committee vote on Szubin's nomination after 325 days, he has said that will not move forward on McWatters's nomination, leaving the Export-Import Bank without the quorum it needs to approve financing requests above \$10 million.⁶⁹

Across the Board, Obama Administration Nominees Have Suffered from Republican Obstructionism

Overall, both the pace at which the Senate confirms nominees and the overall number of nominees confirmed have reached abysmal lows. A study of executive and judicial confirmation rates found that the average time for nominees to receive Senate confirmation was 59.4 days during the Reagan administration, 67.3 days during the George H.W. Bush administration, 91.8 days during the Clinton administration, and 97.4 days during the George W. Bush administration. During President Obama's first six years in office, that number was 127.2 days.⁷⁰ As shown in Figure 4, the confirmation rate jumped



**FIGURE 5. CIVILIAN NOMINEES CONFIRMED DURING
LAST CONGRESS OF EACH ADMINISTRATION**



SOURCE: "MATTERS APPROVED BY THE SENATE THROUGH THE END OF MAY, SECOND SESSION, OF THE 100TH TO 114TH CONGRESSES," CRS, 6/2/2016

dramatically during the Clinton administration, slightly increased in the Bush administration, then rose to unprecedented levels in the Obama administration.

Just as confirmation delays have grown longer for both judicial and executive branch nominees, data on the total number of civilian nominees shows the impact of Republican control of the Senate since 2015. Comparing the number of civilian nominees confirmed from the beginning of the president's final Congress through May 31st of that Congress' last year mirrors the pattern of delay discussed above. As shown in Figure 5, 447 civilian nominees were confirmed during that period in the Reagan administration's final two years, 457 during the comparable period in the George H.W. Bush administration, 352 during the Clinton administration, and 349 during the George W. Bush administration. Only 220 were confirmed during the same time frame of the Obama administration, a dramatic decline from previous administrations.⁷¹

A *Politico* report based on CRS data found that in 2015, the Senate "confirmed the lowest number of civilian nominations—including judges and diplomatic ambassadors—for the first session of a Congress in nearly 30 years."⁷² This is not an accident or an historical blip—it is the result of years of concerted efforts by Senate Republicans to keep key positions unfilled during the Obama administration.

Conclusion

From the moment the Supreme Court vacancy arose, Senate Republicans linked arms in an attempt to deny President Obama the full authority of his office in the final year of his presidency. They cynically claimed they wish to "let the people decide," but the people have already decided. Twice. They elected President Obama in 2008 by nine million votes and re-elected him in 2012 by five million votes. Republicans' statements over many weeks have made clear that their true interest is what it has been for the past eight years: to block and hinder President Obama at every turn, dragging out or blocking outright the confirmation of nominees across the government and the courts.

For seven years, through artificial debt ceiling crises, deliberate government shutdowns, and intentional confirmation blockades, Senate Republicans have acted as though the election and reelection of President Obama relieved them of any responsibility to do their jobs. Senate Republicans embraced the idea that government shouldn't work at all unless it works exclusively for themselves and their friends. This cannot continue. Republican extremists may not care if federal courts are turned into political punching bags, or if the Pentagon, the Department of Justice, or the agencies that protect our consumers or our environment spend months hamstrung and short-staffed, but the American people care, and they deserve better. It's time for Senate Republicans to stand up to extremism and to do their jobs.

Endnotes

- 1 Letter from Civil Rights Organizations to Senate Judiciary Committee Republicans (February 26, 2016) (online at <http://www.civilrights.org/advocacy/letters/2016/uphold-the-constitution.html>)
- 2 “Mitch McConnell Voted To Confirm A Supreme Court Justice In Reagan’s Final Year,” Huffington Post (February 13, 2016) (online at http://www.huffingtonpost.com/entry/mitch-mcconnell-supreme-court-antonin-scalia_us_56bfcde2e4b08ffac1259285?lps3jtt9)
- 3 Senator Mitch McConnell, “Justice Antonin Scalia” (February 13, 2016) (online at http://www.mcconnell.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=8E6839F9-181B-42F5-B8F0-F4244B9D7927&ContentType_id=C19BC7A5-2BB9-4A73-B2AB-3C1B5191A72B&Group_id=0fd6ddca-6a05-4b26-8710-a0b7b59a8f1f&MonthDisplay=2&YearDisplay=2016); see also @SenateMajLdr Tweet (February 13, 2016) (online at <https://twitter.com/SenateMajLdr/status/698653325718257664>)
- 4 “Transcript of the Republican Presidential Debate,” New York Times (February 14, 2016) (online at http://www.nytimes.com/2016/02/14/us/politics/transcript-of-the-republican-presidential-debate.html?_r=0)
- 5 5 U.S.C. § 3331 (online at <https://www.law.cornell.edu/uscode/text/5/3331>); Rule III: Oaths, Rules of the Senate, (online at <http://www.rules.senate.gov/public/index.cfm?p=RuleIII>)
- 6 U.S. Const. Art. II, § 2 (online at http://www.archives.gov/exhibits/charters/constitution_transcript.html)
- 7 “Supreme Court Nominations, present-1789” (online at <http://www.senate.gov/pagelayout/reference/nominations/Nominations.shtml#result>)
- 8 “Supreme Court Nominations, present-1789” (online at <http://www.senate.gov/pagelayout/reference/nominations/Nominations.shtml#result>); see also “Supreme Court Nominees Considered in Election Years Are Usually Confirmed,” New York Times (March 16, 2016) (online at http://www.nytimes.com/interactive/2016/02/15/us/supreme-court-nominations-election-year-scalia.html?_r=0)
- 9 “PN722 — Anthony M. Kennedy — Supreme Court of the United States” (online at <https://www.congress.gov/nomination/100th-congress/722>)
- 10 “Senate Judiciary Committee Hearings for Supreme Court Nominations: Historical Overview and Data,” Congressional Research Service (April 13, 2016)
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