

## Learning about Legislation #29 - The Supreme Court nomination process

With the retirement announcement from Supreme Court Justice Anthony Kennedy, the summer in front of us will be full of Supreme Court nomination/confirmation process chatter. When this last occurred, in April 2017 for Justice Neil Gorsuch, so much of the coverage was dedicated to talk of the so-called “[nuclear option](#)” (changing the rules so that a simple majority was needed for confirmation instead of a [super-majority](#)), that very little attention was paid to the normal confirmation process. Here is a basic primer, courtesy of the [Georgetown Law Library](#):

1. The President usually will consult with Senators before announcing a nomination.
2. When the President nominates a candidate, the nomination is sent to the Senate Judiciary Committee for consideration.
3. The Senate Judiciary Committee holds a hearing on the nominee. The Committee usually takes a month to collect and receive all necessary records, from the FBI and other sources, about the nominee and for the nominee to be prepared for the hearings.
4. During the hearings, witnesses, both supporting and opposing the nomination, present their views. Senators question the nominee on his or her qualifications, judgment, and philosophy.
5. The Judiciary Committee then votes on the nomination and sends its recommendation (that it be confirmed, that it be rejected, or with no recommendation) to the full Senate.
6. The full Senate debates the nomination.
7. The Senate rules used to allow unlimited debate (a practice known as filibustering) and to end the debate, it required the votes of 3/5 of the Senate or 60 senators (known as the cloture vote). In April 2017, the Senate changed this rule and lowered the required votes to 51 to end debate on Supreme Court nominations (this is commonly known as "the nuclear option").
8. When the debate ends, the Senate votes on the nomination. A simple majority of the Senators present and voting is required for the judicial nominee to be confirmed. If there is a tie, the Vice President who also presides over the Senate casts the deciding vote.

In 2015 the Congressional Research Service produced a [white paper](#) on the Supreme Court Nomination and Confirmation process. They show that the average number of days that elapse between a nomination and a confirmation vote in the modern era (since the Ford presidency) is 67. The bulk of that time is spent in the Judiciary Committee vetting process, as the average number of days that pass between their approval and bringing the nomination to the floor of the Senate is 13.

For those of you that like charts and graphs, I highly recommend a visit to the white paper linked above. They have a collection of five figures that do a wonderful job of illuminating the confirmation process.