

Appointments to the Supreme Court  
February 9, 2017  
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President Donald Trump recently announced his nomination of Federal Appeals Court Judge Neil Gorsuch to the vacant seat on the United States Supreme Court. However, before Judge Gorsuch can become a member of the Court he must first be approved by the United States Senate pursuant to its' authority known as "advice and consent." How does this process work?

First, note that there are three levels to the Federal court system and all federal judges have lifetime appointments. The District Court, where trials occur, is where the vast majority of cases begin. Any party unhappy with a District Court decision can appeal to the Circuit Court of Appeals. There are 13 Courts of Appeals . Finally, there is the U.S. Supreme Court with its 9 judges. It is the final stop in the Federal system. Famed Justice Oliver Wendell Holmes once noted, "We're not final because we're infallible, we're infallible because we're final."

Article II, of the United States Constitution provides that "The President shall have Power . . . (to) nominate" people for all vacancies in any federal court. A nomination becomes an appointment only, " . . . by and with the Advice and Consent of the Senate." A person is confirmed for appointment only if the Senate approves of the nomination. Only the President and the Senate are involved in the process. The House of Representatives is not involved in any way.

Second, the Constitution does not describe the process the Senate must use in considering a nominee. Instead, the Senate's own rules control the process. While one might assume that those rules would be designed to streamline the flow of all work through the Senate, the Senate filibuster rules sometimes allow a minority party to block any consideration of a matter - including Supreme Court nominations.

Filibusters exist because each party recognizes that majority status, and the power that goes with it, shifts between the two major parties. Nonetheless, the party that is in the majority has at various times changed the rules to achieve their particular wishes. For example, in 2013 when Democrats controlled the Senate, filibuster rules were changed to prevent their use for lower federal court nominations. They left intact the ability to filibuster Supreme Court nominations.

Now, Republicans are in the majority. They are suggesting that they may further change the rules to prevent filibusters for Supreme Court nominations. Some political commentators call this possible rule change, "The Nuclear Option."

Will Judge Gorsuch be confirmed? Will the filibuster rules be changed? It is impossible to know at this point. What is certain is that in the next 4 years President Trump will be nominating other judges for positions at lower federal courts. It is uncertain if there will be other Supreme Court appointments for him to consider. It was once quipped that, Supreme Court justices "seldom die, and never retire." However, whenever a president nominates a federal judge, at any level, the Senate will be called upon to give its' "advice and consent."

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