Senator Opposition to US Supreme Court Nominations (1937-2010): An Alternative to the Recorded Roll Call Vote

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Research on US Supreme Court confirmation voting has typically employed the recorded roll call vote as the dependent variable. However, some senators have opposed nominations confirmed by voice vote, and senator observations for non-voice votes are sometimes missing due to absences, pair agreements, or a vote as "present." Inspection of the Congressional Record, Judiciary Committee hearings, and newspaper reports revealed a majority of the senator preferences missing from the recorded roll call vote between 1937 and 2010.[1]

[1]Please contact L.J Zigerell for questions about these sources or regarding any errors or possible additional observations.

1 Shortcomings of the Roll Call Measure

In 1971, Senator Barry Goldwater testified before the Senate Judiciary Committee to urge the confirmation of William Rehnquist as an associate justice on the US Supreme Court. Both Goldwater and Rehnquist were conservative Republicans, and Rehnquist had worked on Goldwater's 1964 presidential campaign, so it was no surprise that Goldwater voted in favor of his fellow Arizonan's confirmation, or that fifteen years later Goldwater made multiple statements on the Senate floor in support of Rehnquist's elevation to chief justice.[2] But Goldwater's final year in the Senate was punctuated with periods of illness, and he missed the 1986 Rehnquist chief justice confirmation vote.

Research on confirmation voting has traditionally employed the recorded roll call vote as the dependent variable.[3] Legislator voting is, after all, the behavior of interest for these studies. But in a certain sense this behavior serves only as a proxy for legislator preferences. The Goldwater example illustrates that observed roll calls omit observations for which legislator attitudes about the underlying issue are unambiguous and available. Omission of these observations can introduce inefficiency into a model if legislator absences are random and bias if they are not.

Inspection of non-roll call sources revealed a substantial number of observations of senator preferences on US Supreme Court nominations, provided on the table on the following page. Subsequent pages document the sources for this variable.

[2]July 31, 1986 (p. 18577 of the Congressional Record), and September 11, 1986 (p. 22833).

[3]See Charles M. Cameron, Albert D. Cover, and Jeffrey A. Segal. 1990. Senate Voting on Supreme Court Nominees: A Neoinstitutional Model. *American Political Science Review* 84: 525-534, and Lee Epstein, René Lindstädt, Jeffrey A. Segal, and Chad Westerland. 2006. The Changing Dynamics of Senate Voting on Supreme Court Nominees. *Journal of Politics* 68: 296-307. But see John D. Felice and Herbert F. Weisberg. 1989. The Changing Importance of Ideology, Party, and Region in Confirmation of Supreme Court Nominees, 1953–1988. *Kentucky Law Journal* 77: 509-530. Note that I became aware of their use of non-roll call data after publication of L J Zigerell. 2010. Senator Opposition to Supreme Court Nominations: Reference Dependence on the Departing Justice. *Legislative Studies Quarterly* 35: 393-416.

Senator Opposition to US Supreme Court Nominations (1937-2006)										
Nom		Voice	Roll Call			Senator Preferences				Senate
Num	Nominee Name	Vote	Pro	Con	?	Pro	Con	Pres	?	Size
1	Hugo Black	0	63	16	17	68	18	0	9	95
2	Stanley Reed	1	96	0	0	96	0	0	0	96
3	Felix Frankfurter	1	96	0	0	96	0	0	0	96
4	William Douglas	0	62	4	30	77	6	0	13	96
5	Frank Murphy	1	96	0	0	96	0	0	0	96
6	James Byrnes	1	96	0	0	95	0	0	0	95
7	Harlan Stone (CJ)	1	96	0	0	94	0	0	0	94
8	Robert Jackson	1	96	0	0	94	1	0	0	95
9	Wiley Rutledge	1	96	0	0	95	1	0	0	96
10	Harold Burton	1	96	0	0	96	0	0	0	96
11	Fred Vinson (CJ)	1	96	0	0	96	0	0	0	96
12	Tom Clark	0	73	8	15	79	8	0	9	96
13	Sherman Minton	0	48	16	32	59	18	0	19	96
14	Earl Warren (CJ)	1	96	0	0	96	0	0	0	96
15	John Harlan II	0	71	11	14	77	12	0	7	96
16	William Brennan	1	96	0	0	95	1	0	0	96
17	Charles Whittaker	1	96	0	0	96	0	0	0	96
18	Potter Stewart	0	70	17	13	80	17	0	1	98
19	Byron White	1	100	0	0	100	0	0	0	100
20	Arthur Goldberg	1	100	0	0	99	1	0	0	100
21	Abe Fortas	1	100	0	0	97	3	0	0	100
22	Thurgood Marshall	0	69	11	20	81	15	0	4	100
23	Abe Fortas (CJ)	0	45	43	12	48	48	0	4	100
24	Warren Burger (CJ)	0	74	3	23	92	3	1	4	100
25	Clement Haynsworth	0	45	55	0	45	55	0	0	100
26	Harrold Carswell	0	45	51	4	47	52	0	1	100
27	Harry Blackmun	0	94	0	6	100	0	0	0	100
28	Lewis Powell	0	89	1	10	96	1	0	3	100
29	William Rehnquist	0	68	26	6	72	27	0	2	100
30	John Paul Stevens	0	98	0	2	99	0	0	1	100
31	Sandra Day O'Connor	0	99	0	1	100	0	0	0	100
32	William Rehnquist (CJ)	0	65	33	2	67	33	0	0	100
33	Antonin Scalia	0	98	0	2	99	0	0	1	100
34	Robert Bork	0	42	58	0	42	58	0	0	100
35	Anthony Kennedy	0	97	0	3	100	0	0	0	100
36	David Souter	0	90	9	1	91	9	0	0	100
37	Clarence Thomas	0	52	48	0	52	48	0	0	100
38	Ruth Bader Ginsburg	0	96	3	1	97	3	0	0	100
39	Stephen Breyer	0	87	9	4	91	9	0	0	100
40	John Roberts (CJ)	0	78	22	0	78	22	0	0	100
41	Samuel Alito	0	58	42	0	58	42	0	0	100
42	Sonia Sotomayor	0	68	31	1	69	31	0	0	100
43	Elena Kagan	0	63	37	0	63	37	0	0	100

2 Documentation of Sources

1. **Hugo Black** (confirmation vote date of 8/17/1937)
   The recorded roll call vote was 63 in favor and 16 opposed (79 total, 17 missing).

   - The Congressional Record for the roll call (p. 9102-9103) indicated that Hayden (AZ), Norris (NE), O'Mahoney (WY), and Russell (GA) would have voted in favor, and that Tydings (MD) and Vandenberg (MI) would have voted against. Austin announced a general pair of Gibson (VT) and Duffy (WI) with no indication of preference. The Record stated only that Bailey, Black, McCarran, McNary, Maloney, Smith, Walsh, and Wheeler were absent.
   - Hugo Black served in the Senate at the time, so one of the missing observations is Black himself. It is coded in favor.
   - On the roll call vote immediately previous to the confirmation roll call vote (p. 9102), Ellison Smith voted against a motion to recommit the Black nomination to the Judiciary Committee. The two roll calls were highly correlated: 13 of the 16 senators who voted against Black's nomination also voted to recommit the nomination.
   - McCarran voted to report the Black nomination favorably from the Judiciary Committee.

     > The New York Times. August 17, 1937. "Committee Upholds Black, 13 to 4, in Stormy Session; Borah With the Majority–Burke and King,–Democrats, Join 2 Republicans–Senate Leaders Seek Final Vote Today."

   - A search of LexisNexis Congressional Publications[4] revealed no minutes of a Judiciary subcommittee or committee hearing.
   - A search of the Congressional Record index for remarks in the Senate on the nomination revealed no preferences of uncoded senators.
   - The unofficial sense of the Senate, therefore, was 68 in favor and 18 opposed, with 9 uncoded (Bailey, Duffy, Gibson, McCarran, McNary, Maloney, Smith, Walsh, and Wheeler), and one vacancy in the Arkansas delegation (Senator Robinson served until July 14, 1937, and Senator Miller began service on November 15, 1937). Neither McCarran nor Smith were coded but preferences for each may be presumed from the aforementioned information.

2. **Stanley Reed** (1/25/1938)
   The Congressional Record indicated that the nomination was approved by voice vote, with no information on senator preferences (p. 1031).

[4] Searches were conducted with the keywords "nomination" and the nominee's first and last name separated by the "w/3" function (e.g., Hugo w/3 Black).

- A search of LexisNexis Congressional Publications revealed only the unpublished minutes of a Judiciary subcommittee hearing (HRG-1937-SJS-0019, Jan. 20, 1937, 28 pp.) with Borah, King, Logan, McGill, Norris, and Van Nuys present.[5] Logan provided testimony in favor of the nomination. The nomination was reported favorably from committee without an indication of a vote tally (Rutkus and Bearden 2006).

3. **Felix Frankfurter** (1/17/1939)
   The Congressional Record indicated that the nomination was approved by voice vote (p. 409).

   - The only information on senator preferences found in the Record was the movement by Neely that the nomination be confirmed (p. 409).
   - A search of LexisNexis Congressional Publications revealed only a Judiciary subcommittee hearing (HRG-1939-SJS-0001, Jan. 7, 10-12, 1939, 132 pp.), but no senators provided testimony.
   - The nomination was reported favorably from committee without an indication of a vote tally (Rutkus and Bearden 2006).[6]

4. **William Douglas** (4/4/1939)
   The recorded roll call vote was 62 in favor and 4 opposed (66 total, 30 missing).

   - The Congressional Record for the roll call (p. 3788) indicated that Bankhead (AL), Clark (ID), Downey (CA), Ellender (LA), Gibson (VT), Herring (IA), Lee (OK), Lewis (IL), Lucas (IL), Pepper (FL), Shipstead (MN), Thomas (OK), Truman (MO), Tydings (MD), and Wiley (WI) would have voted in favor, and that Hale (ME) and Townsend (DE) would have voted against. The Record indicated only that Bailey (NC), Donahey (OH), Glass (VA), Holt (WV), Johnson (CA), Van Nuys (IN), Walsh (MA), and Wheeler (MT) were absent. The Record did not mention Bridges, Capper, Tobey, Vandenberg, or White.
   - A search of LexisNexis Congressional Publications revealed only the unpublished minutes of a Judiciary subcommittee hearing (HRG-1939-SJS-0013, Mar. 24, 1939, 4 pp.), but no senators provided testimony. The nomination was reported favorably from committee without an indication of a vote tally (Rutkus and Bearden 2006).
   - A search of the Congressional Record index for remarks in the Senate on the nomination revealed no preferences of uncoded senators.
   - The unofficial sense of the Senate, therefore, was 77 in favor and 6 opposed, with 13 uncoded (Bailey, Bridges, Capper, Donahey, Glass, Holt, Johnson, Tobey, Vandenberg, Van Nuys, Walsh, Wheeler, and White).

[5] The year of the meeting is incorrectly marked 1937 in the LexisNexis citation.

[6] Denis Steven Rutkus and Maureen Bearden. 2006. Supreme Court Nominations, 1789 – 2005: Actions by the Senate, the Judiciary Committee, and the President. CRS Report for Congress. Congressional Research Service: The Library of Congress.

5. **Frank Murphy** (1/16/1940)
   The Congressional Record indicated that the nomination was approved by voice vote (p. 357).

   - In the Record, McNary announced that the absent LaFollette would have voted in favor, Vandenberg announced that he planned to vote in favor, and Wagner announced that absent Mead would have voted in favor (p. 357).
   - A search of LexisNexis Congressional Publications revealed only a Judiciary subcommittee hearing (HRG-1939-SJS-0002, Jan. 13, 1939, 16 pp.) for Frank Murphy's nomination to Attorney General. The Murphy associate justice nomination was reported favorably from committee without an indication of a vote tally (Rutkus and Bearden 2006).

6. **James Byrnes** (6/12/1941)
   The Congressional Record indicated that the nomination was approved by voice vote (p. 5062).

   - In the Record, Glass moved that the nomination not be referred to committee, McNary joined the Glass motion, and Van Nuys agreed (p. 5062).
   - A search of LexisNexis Congressional Publications revealed no documents on the nomination. The nomination was received in the Senate (p. 5061), but was not referred to the Judiciary Committee.
   - The nomination was confirmed by voice vote during a vacancy in the Texas delegation (Senator Sheppard served until April 9, 1941, and Senator O'Daniel began service on August 4, 1941).

7. **Harlan Stone** (6/27/1941, Chief Justice)
   The Congressional Record indicated that the nomination was approved by voice vote (p. 5618-5619).

   - The only information on senator preferences found in the Record was that Norris spoke in favor of the nomination (p. 5618-5619).
   - A search of LexisNexis Congressional Publications revealed only the unpublished minutes of a Judiciary subcommittee hearing (HRG-1941-SJS-0020, June 21, 1941, 3 pp.), but no senators provided testimony. The nomination was reported favorably from committee without an indication of a vote tally (Rutkus and Bearden 2006).
   - The nomination was confirmed during a vacancy in the Mississippi delegation (Senator Harrison served until June 22, 1941, and Senator Eastland began service June 30, 1941) and during a vacancy in the Texas delegation (Senator Sheppard served until April 9, 1941, and Senator O'Daniel began service on August 4, 1941).

8. **Robert Jackson** (7/7/1941)
   The Congressional Record indicated that the nomination was approved by voice vote (p. 5830-5845).

   - In the Record, Tydings opposed the nomination at length (p. 5830-5841). Some senators challenged Tydings, but the only clear indications of vote preference in favor of the nomination came from Burton (p. 5833) and Mead (p. 5844). O'Mahoney noted that no one on the subcommittee or committee dissented from the favorable recommendation (p. 5837, 5841).
   - A search of LexisNexis Congressional Publications revealed only a Judiciary subcommittee hearing (HRG-1941-SJS-0004, June 21, 23, 27, 30, 1941, 74 pp.). At the hearing, Tydings testified against the nomination. George Norris (NE) spoke, but was unclear about favoring or opposing. The Judiciary Committee reported the nomination favorably with no recorded vote (Rutkus and Bearden 2006).
   - The nomination was confirmed during a vacancy in the Texas delegation (Senator Sheppard served until April 9, 1941, and Senator O'Daniel began service on August 4, 1941).

9. **Wiley Rutledge** (2/8/1943)
   The Congressional Record indicated that the nomination was approved by voice vote (p. 681-683).

   - In the Record, Langer announced opposition to the nomination (p. 681), and skeptically noted that Senator Barkley announced in the press that Langer would be the only vote in opposition to the nomination (p. 682). O'Mahoney noted that the nomination passed the Judiciary Committee without a negative vote, although Langer and two or three others withheld their vote (p. 682). Stewart spoke in favor of the nomination (p. 683).
   - A search of LexisNexis Congressional Publications revealed no documents on the nomination. The nomination was reported favorably from committee without an indication of a vote tally (Rutkus and Bearden 2006).

10. **Harold Burton** (9/19/1945)
    The Congressional Record indicated that the nomination was approved by voice vote (p. 8732-8733).

    - In the Record, McCarran reported the nomination favorably (p. 8732). Austin, Barkley, Brewster, and Taft spoke in favor of the nomination (p. 8732-8733).
    - A search of LexisNexis Congressional Publications revealed no documents on the nomination. The nomination was reported favorably from committee without an indication of a vote tally (Rutkus and Bearden 2006).

11. **Fred Vinson** (6/20/1946, Chief Justice)
The Congressional Record indicated that the nomination was approved by voice vote with no information on senator preferences (p. 7210).

    - A search of LexisNexis Congressional Publications revealed only the unpublished minutes of a Judiciary subcommittee hearing (HRG-1946-SJS-0015, June 14, 1946, 7 pp.), but no senators provided testimony. The nomination was reported favorably from committee without an indication of a vote tally (Rutkus and Bearden 2006).

12. **Tom Clark** (8/18/1949)
The recorded roll call vote was 73 in favor and 8 opposed (81 total, 15 missing).

    - The Congressional Record (p. 11730) for the roll call indicated that Downey (CA), Hickenlooper (IA), Hoey (NC), Long (LA), Lucas (IL), and McGrath (RI) would have voted in favor. The Record indicated only that Aiken (VT), Baldwin (CT), Brewster (ME), Butler (NE), McCarthy (WI), Reed (KS), Schoeppel (KS), Taylor (ID), and Tobey (NH) were absent.
    - A search of the Congressional Record index for remarks in the Senate on the nomination revealed no preferences of uncoded senators (p. 11648ff, 11694ff, 11745ff).
    - A search of LexisNexis Congressional Publications revealed only a Judiciary Committee hearing (HRG-1949-SJS-0006, Aug. 9-11, 1949, 363 pp.). None of the uncoded senators served on the Judiciary Committee or provided testimony.
    - The unofficial sense of the Senate, therefore, was 79 in favor and 8 opposed, with 9 uncoded (Aiken, Baldwin, Brewster, Butler, McCarthy, Reed, Schoeppel, Taylor, and Tobey).

13. **Sherman Minton** (10/4/1949)
The recorded roll call vote was 48 in favor and 16 opposed (64 total, 32 missing).

    - The Congressional Record (p. 13806) for the roll call indicated that Ellender (LA), Fulbright (AR), Hoey (NC), Jenner (IN), Leahy (RI), Miller (ID), O'Conor (MD), Smith (ME), and Thomas (UT) would have voted in favor, and that Dulles (NY) and Taft (OH) would have voted against.
    - The Record indicated only that Brewster (ME), Bricker (OH), Bridges (NH), Butler (NE), Chavez (NM), Frear (DE), Gillette (IA), Knowland (CA), Malone (NV), Martin (PA), McCarran (NV), McClellan (AK), Reed (KS), Smith (NJ), Tobey (NH), Tydings (MD), Vandenberg (MI), Withers (KY), and Young (ND) were absent.
    - A search of the Congressional Record index for remarks in the Senate on the nomination revealed no preferences of uncoded senators (p. 13795ff, 13803ff).

- A search of LexisNexis Congressional Publications revealed only a Judiciary Committee hearing (HRG-1949-SJS-0010, Sept. 27, 1949, 27 pp.). McCarran was the chair of the Judiciary Committee, but was not present at the meeting. There were two dissents from the Judiciary Committee of unknown origin.
- The unofficial sense of the Senate, therefore, was 59 in favor and 18 opposed, with 19 uncoded (Brewster, Bricker, Bridges, Butler, Chavez, Frear, Gillette, Knowland, Malone, Martin, McCarran, McClellan, Reed, Smith, Tobey, Tydings, Vandenberg, Withers, and Young).

14. **Earl Warren** (3/1/1954, Chief Justice)
The Congressional Record indicated that the nomination was approved by voice vote (p. 2381).

    - In the Record, Knowland (p. 2047, 2380) and Kuchel (p. 2380) spoke in favor of the nomination. Long stated that he expected to vote for the nomination (p. 2046). Johnson of Colorado stated that he was a supporter of the Chief Justice (p. 2046). Welker (apparently referring to himself as "the Senator from Idaho") stated that he enjoys a "warm and close friendship with the nominee" (p. 2046). Morse spoke in favor (p. 2046). Hendrickson called the nominee "distinguished" (p. 2046).
    - A search of LexisNexis Congressional Publications revealed four Judiciary Committee hearing documents. The first document (HRG-1954-SJS-0094, Feb. 2, 1954, 76 pp.) contained letters from the chair to the committee members regarding the Warren nomination indicating that a non-response would be interpreted as no objection. Documents were included from Knowland (p. 67) and Kuchel (p. 68), both of whom expressed approval for the Warren nomination. In the second document (HRG-1954-SJS-0092, Feb. 19, 1954, 40 pp.), Knowland provided testimony in support (p. 67), Smithey read a letter from Hendrickson in favor (p. 68-71), Welker thanked Hendrickson for the letter (p. 72), and Smithey read a letter from O'Conor in favor (p. 72-73). The third document (HRG-1954-SJS-0091, Feb. 20, 1954, 28 pp.) contained no testimony from any senators. The fourth document (HRG-1954-SJS-0089, Feb. 24, 1954, 132 pp.) contained a roll call to report the nomination favorably (p. 143-154): Butler, Dirksen, Hendrickson (twice), Kefauver, McCarran, McClellan, Watkins, Welker, and Wiley voted in favor. Eastland and Johnston voted in opposition. Langer voted in favor but "with a lot of reservations", which Kilgore concurred with, but then Kilgore changed his vote to opposition. Kilgore noted that his opposition was based on the "press pressure methods of trying to get a decision out of this committee" (p. 147) and that he "still think[s] Earl Warren is an excellent Chief Justice" (p. 147) and that he would vote in favor of the confirmation of Earl Warren if that were the only issue (p. 153). The document noted that Jenner favored the nomination but did not speak (he may be the second Hendrickson listed). The official Judiciary Committee report was favorable, 12-3.

- The idiosyncratic nature of opposition to the Warren nomination in the Judiciary Committee vote cautioned against imputing preferences to senators based on their statements or votes during Judiciary Committee hearings.

15. **John Harlan II** (3/16/1955)
The recorded roll call vote was 71 in favor and 11 opposed (82 total, 14 missing).

    - The Congressional Record for the roll call (p. 3011, 3036) indicated that Scott withheld his opposition vote in a pair with Morse (OR), who would have voted in favor. The Record also indicated that Kennedy (MA), McNamara (MI), Saltonstall (MA), Smith (NJ), and Symington (MO) would have voted in favor. The Record indicated only that Bridges (NH), Carlson (KS), George (GA), Murray (MT), Schoeppel (KS), Sparkman (AL), and Young (ND) were absent.
    - A search of the Congressional Record index for remarks in the Senate on the nomination revealed no preferences of uncoded senators (p. 2829ff, 3012ff, 3022ff, 3034ff).
    - A search of LexisNexis Congressional Publications revealed four Judiciary Committee hearing documents. The first document (HRG-1954-SJS-0182, Feb. 4, 1954, 4 pp.) indicated only that blue slip senators Lehman and Irving had no objection. The second document (HRG-1954-SJS-0140, Nov. 19, 1954, 55 pp.) contained no information about uncoded senator preferences. The third document returned was a copy of the second document. The fourth document (HRG-1955-SJS-0001, Feb. 24, 25, 1955, 232 pp.)[7] and fifth document (HRG-1955-SJS-0127, Feb. 23, 1955, 9 pp.) contained no information about uncoded senator preferences. None of the uncoded senators were on the Judiciary Committee.
    - The unofficial sense of the Senate, therefore, was 77 in favor and 12 opposed, with 7 uncoded (Bridges, Carlson, George, Murray, Schoeppel, Sparkman, and Young).

16. **William Brennan** (3/19/1957)
The Congressional Record indicated that the nomination was approved by voice vote (p. 3946).

    - In the Record, Smith (NJ) and Case (NJ) spoke in favor (p. 3936). Joseph McCarthy spoke against the nomination (p. 3937). Dirksen spoke in defense of Brennan (p. 3945-3946). Morse noted that every senator on his side of the aisle was prepared to vote for Brennan's nomination (p. 3946). Knowland spoke in favor (p. 3633).
    - A search of LexisNexis Congressional Publications revealed only a Judiciary Committee hearing (HRG-1957-SJS-0039, Feb. 26, 27, 1957, 44 pp.). Smith (NJ) and Case (NJ) spoke in favor, and McCarthy (WI) spoke against. The

[7]The Harlan document begins on p. 47 of the pdf.

nomination was reported favorably from committee without an indication of a vote tally (Rutkus and Bearden 2006).

- McCarthy was "the only Senator to oppose President Eisenhower's nomination of William J. Brennan of New Jersey to be Associate Justice of the Supreme Court" (p. 206), according to The New York Times May 5 article, "THE NATION: Joseph R. McCarthy 'Coddling Communists' Senators of Distinction 'Gigantic Intellect' On Mayflower II Beck at Bay."

17. **Charles Whittaker** (3/19/1957)
The Congressional Record indicated that the nomination was approved by voice vote (p. 3946).

    - In the Record, Hennings spoke in favor of the nomination (p. 3929, 3946), and noted that Whittaker's nomination was approved unanimously by the ten present members of the Judiciary Committee out of the 15 total members (p. 3946). Carlson and Symington spoke in favor (p. 2909). Stennis spoke in favor (p. 3108).
    - A search of LexisNexis Congressional Publications revealed only a Judiciary Committee hearing (HRG-1957-SJS-0038, Mar. 18, 1957, 38 pp.). Hennings and Symington spoke in favor. The nomination was reported favorably from committee without an indication of a vote tally (Rutkus and Bearden 2006).

18. **Potter Stewart** (5/5/1959)
The recorded roll call vote was 70 in favor and 17 opposed (87 total, 13 missing).

    - The Congressional Record for the roll call (p. 7472) indicated that Allott (CO), Capehart (IN), Clark (PA), Curtis (NE), Javits (NY), Moss (UT), Murray (MT), Randolph (WV), Symington (MO), and Wiley (WI) would vote in favor, but only that Hickenlooper (IA) was absent.
    - A search of the Congressional Record index for remarks, statements, or letters from Hickenlooper on the nomination revealed no entries.
    - A search of LexisNexis Congressional Publications revealed two Judiciary Committee hearing documents. Hickenlooper did not testify or appear at the first (HRG-1959-SJS-0087, Apr. 9, 1959, 73 pp.) or the second (HRG-1959-SJS-0088, Apr. 14, 1959, 81 pp.). The Judiciary Committee favorably reported the nomination with three dissents, but Hickenlooper did not serve on the committee.
    - The unofficial sense of the Senate, therefore, was 80 in favor and 17 opposed, with 1 uncoded (Hickenlooper).

19. **Byron White** (4/11/1962)
The Congressional Record indicated that the nomination was approved by voice vote (p. 6332).

- Carroll spoke favorably of the nomination, but noted that one or two Judiciary Committee members were absent at the Committee hearing earlier in the day (p. 6331). Kefauver and Russell spoke in favor (p. 6331). Mansfield offered congratulations after the voice vote (p. 6332).
- The nomination was reported favorably from committee without an indication of a vote tally (Rutkus and Bearden 2006).
- A search of LexisNexis Congressional Publications revealed only a Judiciary Committee hearing (HRG-1962-SJS-0001, Apr. 11, 1962, 30 pp.), noting that Allott and Carroll approved the nomination by blue slip.

20. **Arthur Goldberg** (9/25/1962)
The Congressional Record indicated that the nomination was approved by voice vote (p. 20667).

- Allott, Carroll, Cooper, Dirksen, Douglas, Humphrey, Javits, Kuchel, Mansfield, and Pell spoke in favor of the nomination (p. 20665, 20667). Douglas noted that he thought the Judiciary Committee report was unanimous (p. 20665). Thurmond opposed the nomination (p. 20665). Dodd, Morse, Prouty, Randolph, and Yarborough spoke in favor (p. 20666).
- The nomination was reported favorably from committee without an indication of a vote tally (Rutkus and Bearden 2006).
- A search of LexisNexis Congressional Publications revealed only a Judiciary Committee hearing (HRG-1962-SJS-0018, Sept. 11, 13, 1962, 108 pp.). Douglas testified in favor (p. 3). Dirkson and Douglas (p. 1) approved the nomination. Carroll (p. 69) and Pell (p. 15) endorsed the nomination. Long (p. 69) would vote in favor of the nomination. Keating favored the nomination (p. 71) as did Fong (p. 71).

21. **Abe Fortas** (8/11/1965)
The Congressional Record indicated that the nomination was approved by voice vote (p. 20048, 20054-20055, 20068, 20072-20073, 20079).

- Symington noted that the committee approved without a dissenting vote, and announced support for the nomination (p. 20054). Javits spoke favorably (p. 20068). Mansfield spoke in favor and noted that the Judiciary Committee report was unanimous (p. 20073). Williams of Delaware (p. 20072), Curtis (p. 20072), and Thurmond (20054-20055) opposed. Mansfield, Bass, and Tydings spoke in favor (p. 20079).
- The nomination was reported favorably from committee without an indication of a vote tally (Rutkus and Bearden 2006).
- A search of LexisNexis Congressional Publications revealed only a Judiciary Committee hearing (HRG-1965-SJS-0040, Aug. 5, 1965, 62 pp.), indicating that Bass (TN), Dodd (CT), and Gore (TN) testified in favor.

22. **Thurgood Marshall** (8/30/1967)
The recorded roll call vote was 69 in favor and 11 opposed (80 total, 20 missing).

- The Congressional Record for the roll call (p. 24656) indicated that present Mansfield withheld his vote in favor because of a pair with absent Stennis (MI), who would have voted against. The Record also indicated that Bible (NV), Gruening (AL), Harris (OK), Hartke (IN), McCarthy (MN), McGovern (SD), Metcalf (MT), Montoya (NM), Murphy (CA), Muskie (ME), and Nelson (WI) and would have voted in favor, while McClellan (AR), Russell (GA), and Smathers (FL) would have voted against. The Record only indicated that Byrd (VA), Fannin (AZ), Hickenlooper (IA), and Jordan (NC) were absent.
- A search of the Congressional Record index for remarks, statements, or letters from Byrd of Virginia, Fannin, Hickenlooper, and Jordan on the nomination revealed no entries.
- A search of LexisNexis Congressional Publications revealed only a Judiciary Committee hearing (HRG-1967-SJS-0014, July 13, 14, 18, 19, 24, 1967, 202 pp.). None of the four uncoded senators were on the Judiciary Committee or presented testimony.
- The unofficial sense of the Senate, therefore, was 81 in favor and 15 opposed, with 4 uncoded (Byrd of Virginia, Fannin, Hickenlooper, and Jordan).

23. **Abe Fortas** (10/1/1968, Chief Justice cloture vote)
The recorded roll call vote was 45 in favor and 43 opposed (88 total, 12 missing).

- The Congressional Record for the roll call (p. 28933) indicated that present Gruening withheld his vote against in a pair with absent Church (ID) and Morse (OR), both of whom would have voted in favor. The Record also indicated that Aiken (VT), Bible (NV), Ellender (LA), and Smith (ME) would have voted against. The Record indicated only that Bartlett (AK), Long (MO), McGovern (SD), Morton (KY), and Smathers (FL) were absent.
- A search of LexisNexis Congressional Publications revealed eight Judiciary Committee hearing documents. The first (HRG-1968-SJS-0070, June 27, 1968, 92 pp.), the second (HRG-1968-SJS-0017, July 11, 12, 16-20, 22, 23, 1968, 1292 pp.), the third (HRG-1968-SJS-0064, July 24, 1968, 63 pp.), the fourth (HRG-1968-SJS-0023, Sept. 13, 16, 1968, 124 pp.), the fifth (HRG-1968-SJS-0071, Sept. 10, 1968, 111 pp.), the sixth (HRG-1968-SJS-0065, Sept. 11, 1968, 30 pp.), and the seventh (ID: HRG-1968-SJS-0085, Sept. 13, 1968, 11 pp.) contained no information on the preferences of the uncoded senators. In the eighth document (HRG-1968-SJS-0084, Sept. 17, 1968, 24 pp.), Smathers moved that the Fortas nomination be approved and he voted in favor (p. 14), but Long was absent from the meeting (p. 14). Long and Smathers were the only two uncoded senators on the Judiciary Committee.

- The unofficial sense of the Senate, therefore, was 48 in favor and 48 opposed, with 4 uncoded (Bartlett, Edward Long, McGovern, and Morton).
- A search of the Congressional Record index for remarks, statements, or letters from Bartlett, Edward V. Long, McGovern, or Morton on the nomination revealed no entries.

24. **Warren Burger** (6/9/1969, Chief Justice)
The recorded roll call vote was 74 in favor and 3 opposed (77 total, 23 missing).

- The Congressional Record for the roll call (p. 15195) indicated that Fulbright voted present "in view of the circumstances", and that senators Church (ID), Cook (KY), Cranston (CA), Fong (HI), Goldwater (AZ), Gravel (AL), Hollings (SC), Hughes (IA), Javits (NY), Mansfield (MT), McIntyre (NH), Moss (UT), Murphy (CA), Pastore (RI), Pell (RI), Percy (IL), Prouty (VT), and Ribicoff (CT) would have voted in favor. The Record only indicated that Gore (TN), Hart (MI), Inouye (HI), and Metcalf (MT) were absent.
- A search of the Congressional Record index for remarks, statements, or letters from Gore, Hart, Inouye, and Metcalf on the nomination revealed no entries.
- A search of LexisNexis Congressional Publications revealed two Judiciary Committee hearing documents. In the first (HRG-1969-SJS-0136, June 3, 1969, 2 pp.), the Burger nomination was reported favorably to the full Senate by a unanimous voice vote, but Judiciary Committee member Hart was not in attendance at that meeting. The second (HRG-1969-SJS-0039, June 3, 1969, 120 pp.) contained no information on the preferences of uncoded senators. Gore, Metcalf, and Inouye were not members of the committee and did not present testimony.
- The unofficial sense of the Senate, therefore, was 92 in favor and 3 opposed, with 1 present and 4 uncoded (Gore, Hart, Inouye, and Metcalf).

25. **Clement Haynsworth** (11/21/1969)
The recorded roll call vote was 45 in favor and 55 opposed (100 total, 0 missing).

26. **Harrold Carswell** (4/8/1970)
The recorded roll call vote was 45 in favor and 51 opposed (96 total, 4 missing).

- The Congressional Record for the roll call (p. 10769) indicated that Bennett (UT) and Mundt (SD) would have voted in favor, and that Pell (RI) would have voted against. The Record only indicated that Anderson (NM) was absent.
- A search of the Congressional Record index for remarks, statements, or letters from Anderson on the nomination revealed no entries.
- A search of LexisNexis Congressional Publications revealed two Judiciary Committee hearings. Neither the first (HRG-1970-SJS-0062, Jan. 27-29, Feb. 2, 3, 1970, 470 pp.) nor the second (HRG-1970-SJS-0121, Feb. 3, 1970, 69 pp.)

contained information on Anderson's preferences. The Judiciary Committee reported the nomination with four dissenting votes of unknown origin (Rutkus and Bearden 2006), but Anderson was not on the Judiciary Committee and did not present testimony.

- The unofficial sense of the Senate, therefore, was 47 in favor and 52 opposed, with 1 uncoded (Anderson).

27. **Harry Blackmun** (5/12/1970)
The recorded roll call vote was 94 in favor and 0 opposed (94 total, 6 missing).

- The Congressional Record for the roll call (p. 15117) indicated that Bayh (IN), Goldwater (AZ), Gore (TN), Mundt (SD), Russell (GA), and Tower (TX) would have voted in favor.
- The unofficial sense of the Senate, therefore, was 100 in favor and 0 opposed.

28. **Lewis Powell** (12/6/1971)
The recorded roll call vote was 89 in favor and 1 opposed (90 total, 10 missing).

- The Congressional Record for the roll call (p. 44857) indicated that Bennett (UT), Dominick (CO), Gambrell (GA), Humphrey (MN), Miller (IA), Moss (UT), and Percy (IL) would have voted in favor. The Record indicated only that Inouye (HI), Mundt (SD), and Stafford (VT) were absent.
- A search of the Congressional Record index for remarks, statements, or letters from Inouye, Mundt, and Stafford on the nomination revealed no entries.
- A search of LexisNexis Congressional Publications revealed only a Judiciary Committee hearing (HRG-1971-SJS-0061, Nov. 3, 4, 8-10, 1971, 496 pp.). There were no dissents were from the Judiciary Committee, and Inouye, Mundt, and Stafford were not on the Judiciary Committee and did not present testimony.
- The unofficial sense of the Senate, therefore, was 96 in favor and 1 opposed, with 3 uncoded (Inouye, Mundt, and Stafford).

29. **William Rehnquist** (12/10/1971)
The recorded roll call vote was 68 in favor and 26 opposed (94 total, 6 missing).

- The Congressional Record for the roll call (p. 46197) indicated that present Mansfield would have voted against, but had a pair with absent Percy (IL), who would have voted in favor. The Record also noted that absent Smith (ME) would have voted in favor, but only that Anderson (NM), Bennett (UT), and Mundt (SD) were absent.
- A search of the Congressional Record index for remarks, statements, or letters from Anderson, Bennett, and Mundt on the nomination revealed no entries for Anderson and Mundt, but returned an entry (p. 46173) in which Fannin entered into the Record a statement by Bennett in favor of the nomination.

- A search of LexisNexis Congressional Publications revealed only a Judiciary Committee hearing (HRG-1971-SJS-0061, Nov. 3, 4, 8-10, 1971, 496 pp.). The Judiciary Committee voted 12-4 in favor of the nomination (Rutkus and Bearden 2006), with the four dissents from Bayh (IN), Hart (MI), Kennedy (MA), and Tunney (CA). Anderson and Mundt were not on the Judiciary Committee and did not present testimony.
- The unofficial sense of the Senate, therefore, was 72 in favor and 27 opposed, with 2 uncoded (Anderson and Mundt).

30. **John Paul Stevens** (12/17/1975)
The recorded roll call vote was 98 in favor and 0 opposed (98 total, 2 missing).

- The Congressional Record for the roll call (p. 41128) indicated only that Allen (AL) and Bayh (IN) were absent. Bayh supported the nomination elsewhere in the Record (p. 39883).
- A search of the Congressional Record index for remarks, statements, or letters from Allen on the nomination revealed no entries.
- A search of LexisNexis Congressional Publications revealed two Judiciary Committee hearings (HRG-1975-SJS-0013, Dec. 8-10, 1975, 232 pp.) and (HRG-1975-SJS-0085, Dec. 11, 1975, 6 pp.). There were no dissents from the Judiciary Committee's favorable report (Rutkus and Bearden 2006), and Allen did not serve on the committee or present testimony.
- The unofficial sense of the Senate, therefore, was 99 in favor and 0 opposed, with 1 uncoded (James Browning Allen of Alabama).

31. **Sandra Day O'Connor** (9/21/1981)
The recorded roll call vote was 99 in favor and 0 opposed (99 total, 1 missing).

- The Congressional Record (p. 21375) for the roll call indicated that Baucus (MT) would have voted in favor.
- The unofficial sense of the Senate, therefore, was 100 in favor and 0 opposed.

32. **William Rehnquist** (9/17/1986, Chief Justice)
The recorded roll call vote was 65 in favor and 33 opposed (98 total, 2 missing).

- The Congressional Record for the roll call (p. 23803) indicated that Garn would have voted in favor, but only that Goldwater was absent.
- However, at the Judiciary Committee hearings, Goldwater made an opening statement in favor of Rehnquist's elevation to the chief justiceship (p. 8).
- The unofficial sense of the Senate, therefore, was 67 in favor and 33 opposed.

33. **Antonin Scalia** (9/17/1986)
The recorded roll call vote was 98 in favor and 0 opposed (98 total, 2 missing).

- The Congressional Record for the roll call (p. 23813) contained a misprint:

  > Mr. Simpson: I announce that the Senator from Utah [Mr. Garn] and the Senator from Arizona [Mr. Goldwater] are necessarily absent. I further announce that, if present and voting, the Senator from Utah [Mr. Garn] would each vote "yea."

  Goldwater was not coded as supporting Scalia on the basis of this Record entry (with an ambiguous "each") because, in the Record entry for the Rehnquist nomination on the same day, Simpson only indicated the preference of absent Garn.

- A search of the Congressional Record index for remarks, statements, or letters from Goldwater on the nomination revealed no entries. A Lexis-Nexis search of the Daily Congressional Record & Rules restricted by speaker on the floor to Goldwater and to the search term "Scalia" revealed two documents (132 Cong Rec S 12629, 132 Cong Rec S 12378), neither of which provided information about Goldwater's preference for the Scalia nomination.
- Goldwater was not on the Judiciary Committee and did not present testimony.
- The unofficial sense of the Senate, therefore, was 99 in favor and 0 opposed, with 1 uncoded (Goldwater).

34. **Robert Bork** (10/23/1987)
The recorded roll call vote was 42 in favor and 58 opposed (100 total, 0 missing).

35. **Anthony Kennedy** (2/3/1988)
The recorded roll call vote was 97 in favor and 0 opposed (100 total, 3 missing).

- The Congressional Record for the roll call (p. 739) indicated that Biden (DE) and Gore (TN) would have voted in favor, but only that Simon (IL) was absent.
- However, Simon did provide testimony to the Judiciary Committee that was favorable to Anthony Kennedy, although it stopped short of an endorsement:

  > I cannot agree with all of Judge Kennedy's opinions. In a few cases – such as his expansive discussion of substantive due process in the case of Beller v. Middendorf – he has seemed to stray somewhat from the principle of judicial restraint which he usually follows. But even in that case he reached the correct result, as later confirmed by the Supreme Court's decision in Bowers v. Hardwick. On the whole, his judicial record is exemplary and sound. Any attempt to suggest that Judge Kennedy is not within the so-called "mainstream" is implausible. Even those of his opinions which hay be criticized by hostile witnesses – such as his comparable worth opinion and his decision upholding the Navy's right to discharge homosexuals in the Beller case – are consistent with results reached by numerous other federal appeals courts. The test for me, though, is not whether he is within some selective notion of the

"mainstream"; it is whether he is faithful to the constitution and the limits of the judicial role. From what I've seen and read so far, Judge Kennedy should pass that more important test. I hope his testimony and his answers to my colleagues' questions will reenforce that belief.

The quote was considered favorable enough to warrant coding Simon in favor of the nomination.

- The unofficial sense of the Senate, therefore, was 100 in favor and 0 opposed.

36. **David Souter** (10/2/1990)
The recorded roll call vote was 90 in favor and 9 opposed (99 total, 1 missing).

- The Congressional Record (26996-26997) for the roll call indicated only that Wilson (CA) was absent.
- Wilson was not on the Judiciary Committee at the time and did not testify at the committee hearings.
- However, according to the New York Times, "Senator Pete Wilson, Republican of California, did not vote [on the Souter nomination]. Mr. Wilson was in California campaigning for governor today, but he has endorsed the nomination."

  Source: Richard L. Berke. 1990. "Senate Confirms Souter, 90 to 9, As Supreme Court's 105th Justice." The New York Times. October 3.
- The unofficial sense of the Senate, therefore, was 91 in favor and 9 opposed.

37. **Clarence Thomas** (10/15/1991)
The recorded roll call vote was 52 in favor and 48 opposed (100 total, 0 missing).

38. **Ruth Bader Ginsburg** (8/3/1993)
The recorded roll call vote was 96 in favor and 3 opposed (99 total, 1 missing).

- The Congressional Record (p. 18414) indicated that Riegle (MI) would have voted in favor.
- The unofficial sense of the Senate, therefore, was 97 in favor and 3 opposed.

39. **Stephen Breyer** (7/29/1994)
The recorded roll call vote was 87 in favor and 9 opposed (96 total, 4 missing).

- The Congressional Record for the roll call (p. 18704) indicated that Graham (FL) and Wallop (WY) would have voted in favor, but contained no information on the preferences of Durenberger (MN) or Pell (RI). However, the Record elsewhere contained a statement by Durenberger in favor of the nomination (p. 18571) and a statement by Pell in favor of the nomination (p. 18572).
- The unofficial sense of the Senate, therefore, was 91 in favor and 9 opposed.

40. **John Roberts** (9/29/2005, Chief Justice)
The recorded roll call vote was 78 in favor and 22 opposed (100 total, 0 missing).

41. **Samuel Alito** (1/31/2006)
The recorded roll call vote was 58 in favor and 42 opposed (100 total, 0 missing).

42. **Sonia Sotomayor** (8/6/2009)
The recorded roll call vote was 68 in favor and 31 opposed (99 total, 1 missing).

    - The Congressional Record (8945) for the roll call indicated only that Kennedy (MA) was absent.
    - However, according to the Associated Press, "Kennedy issued a statement in support of Sotomayor after President Barack Obama announced her nomination."

        Source: The Associated Press. 2009. "Ailing Sen. Kennedy Fails to Attend Sotomayor Vote." August 6.

    - The unofficial sense of the Senate, therefore, was 69 in favor and 31 opposed.

43. **Elena Kagan** (8/5/2010)
The recorded roll call vote was 63 in favor and 37 opposed (100 total, 0 missing).