

Obama's SCOTUS Nominee Unlikely to be Confirmed Before 2016 Elections

Procedural Possibilities for Nominating a SCOTUS Justice



Option 1: *Obstructing a Judiciary Confirmation Hearing*

Republican Senate leadership has staked out the position that no Obama nominee will move forward. Because the GOP holds a Senate majority, Sen. Chuck Grassley (R-IA), Chairman of the Senate Judiciary Committee, has the power to refuse to hold a confirmation hearing.

Likelihood: **Possible**

There is no apparent precedent for the Senate to refuse to even hear from a Supreme Court nominee because of an impending election. Doing so would open Republicans to claims of obstructionism.

Option 2: *Hearing is Held, but Nominee is Blocked*

The Senate Judiciary committee can hold a nomination hearing and use the information gathered to find a reason to ultimately vote against the nominee. Even if a nominee makes it through the committee, any potential Supreme Court appointment requires the consent of 60 senators to avoid a filibuster and move forward.

Likelihood: **Probable**

A hearing would allow Republicans to argue that they at least gave the nominee a chance. Even if a nominee receives a floor vote, it is unlikely that 14 Republicans would vote to end a filibuster.

Option 3: *The "Nuclear" Option*

If the Democrats win back the Senate majority, but lose the White House, there would be a 17-day window during which Democrats control both branches of government. This would leave time for the president to submit a nominee and for Democrats to apply the 'nuclear option,' which would eliminate a filibuster and allow them to vote in a nominee by a simple majority.

Likelihood: **Last resort for Dems**

In 2013, Senate Democrats already used the 'nuclear option' to eliminate filibusters for most judicial appointments. This is not the White House's preferred option and would incense Republicans.

Sources: Tom Goldstein, "How the politics of the next nomination will play out," SCOTUSblog, Feb 14, 2016; Alex Rogers and Sam Baker, "Democrats' Hopeful Supreme Court Strategy," National Journal, Feb 16, 2016; Ari Melber, "How Obama Could Win Supreme Court Battle – Even if Republicans Take the White House," NBCNews, Feb 16, 2016; Noun Project: Michael Finney, Zoe Austin, Lucas fhñe.