



Written by [Steve Byas](#) on October 5, 2020

Ted Cruz: Republican Presidents Have Not Done Well on Supreme Court Nominations

In his new book [One Vote Away: How a Single Supreme Court Seat Can Change History](#), Senator Ted Cruz (R-Texas) is highly critical of the performance of Republican presidents in making nominations to that court since the days of President Dwight Eisenhower.

Cruz wrote, “Republicans have, historically speaking, been absolutely terrible at judicial nominations — especially nominations for Supreme Court justices. To borrow from baseball, Republicans at best bat .500.” Democrats, on the other hand, Cruz lamented, “bat nearly 1.000.”



AP Images

The notable exception was President John Kennedy’s selection of Byron White, who was one of only two dissenters in the infamous *Roe v. Wade* decision.

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Cruz clerked for Chief Justice William Rehnquist, and has the distinction of being the youngest, and the longest-serving, solicitor general in Texas history. Cruz recently declined to be considered for the latest opening on the Court caused by the death of Justice Ruth Bader Ginsburg. The book has just been released, but was obviously written prior to Ginsburg’s passing. Cruz noted the recent Hollywood movie about Ginsburg “in hagiographic terms better suited for Mother Teresa or George Washington. Somehow Hollywood has never produced the film, *Nino, The Extraordinary Justice Scalia*.”

Part of the problem, as Cruz sees it, is that Republican nominees are “lionized” by the left-wing media and welcomed at Washington cocktail parties when they abandon fidelity to the Constitution and side with the Left on the Court. In contrast, Cruz contends, the justices “most faithful to the Constitution” (which he names as Antonin Scalia, Clarence Thomas, William Rehnquist, and Samuel Alito) share important characteristics — namely, before they were nominated, they each had a long and demonstrated record. “Each had been in the executive branch, each had defended constitutional positions, and critically, each had been roundly criticized for doing so.”

Typically, Cruz argues, those who fail to faithfully construe the Constitution “have little to no record, [and] they have assiduously avoided controversy.”

Republican presidents have gotten this wrong “starting in the 1950s,” Cruz wrote. Cruz notes that two of the most liberal justices of the 20th century “were picked by the Republican President Dwight Eisenhower: Earl Warren and William Brennan.”

Cruz details the fight for the Republican nomination in 1952 between Eisenhower and Senator Robert A. Taft, arguing that Taft’s narrow loss for the nomination began the rise of the modern Supreme Court out of what the Framers of the Constitution considered the “least dangerous branch.” In exchange for



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support from California (Earl Warren's home state) in his razor-thin victory over Taft, Eisenhower promised to give Warren the first open seat on the Supreme Court. Eisenhower later tapped Brennan for the Court at the urging of Warren.

The next Republican president was Richard Nixon. After former New York Governor Thomas Dewey (a leader of the Republican establishment that had picked Eisenhower over Taft) turned Nixon down, he turned to Warren Burger, who replaced Earl Warren, but Burger was not much of an improvement over Warren. Cruz praised Nixon's selection of William Rehnquist as an associate justice, but wrote that Harry Blackmun was a terrible choice. Blackmun was the principal author of *Roe v. Wade*.

Nixon was followed by President Gerald Ford, who gave us John Paul Stevens on the Court, who, Cruz wrote, "became one of the liberal lions of the Supreme Court."

"Even the great Ronald Reagan got half of his Supreme Court nominees wrong," Cruz wrote. Of the four Reagan appointed, "only two — William Rehnquist [promoted by Reagan to chief justice in 1986] and Antonin Scalia — stayed faithful to their oaths." Reagan also named Sandra Day O'Connor and Anthony Kennedy to the Court, both of whom emerged as notorious "swing votes" on the Court. Cruz charged that O'Connor basically never minded what the law said.

Reagan's greatest achievement was in selecting Scalia and elevating Rehnquist to chief justice, according to Cruz. Reagan also nominated Robert Bork to the Supreme Court, but the Democrats, who won back the U.S. Senate following the 1986 midterms, savaged that nominee so severely that to "Bork" someone has come to be essentially the equivalent of character assassination. Only after Bork was defeated, and Reagan's second nomination of Douglas Ginsburg fell apart after it was revealed that he had smoked pot (times were different in the 1980s) did Reagan select Kennedy.

President George H.W. Bush gave us David Souter, who turned out to be a liberal. Cruz argues that Bush could have selected Edith Jones, a known constitutionalist, but feared the resistance in the Democrat-controlled Senate that selection would elicit. Batting 50-50, Bush also nominated Clarence Thomas, who has been consistently constitutionalist. George W. Bush gave us John Roberts as chief justice, the man who was the deciding vote upholding the mandate of the Affordable Care Act in the case *NFIB v. Sebelius*. The younger Bush also gave us another good justice, in Cruz's opinion, in the person of Samuel Alito (called Scalito by his liberal detractors), but only after Bush tried to ram through what Cruz considered lesser lights — Harriet Miers and Alberto Gonzalez.

Regarding President Trump, Cruz wrote that he wanted the president to choose fellow Senator Mike Lee of Utah (he has a staunch conservative record in Congress), but instead Trump opted to pick Neil Gorsuch and Brett Kavanaugh. From Cruz's comments, it is clear that he considers the two superior choices to the Souters, O'Connor's, and Kennedy's of recent years, but not as good as Trump could have picked.

It should be noted that Cruz did not mention Amy Coney Barrett, as her nomination was made after the book had been written, but he has praised her nomination in recent interviews.

In conclusion, Cruz argued, "Republican presidents must do better than our record over the past seventy years." With Democratic nominees almost voting in lock-step with the Left, and with Republicans only being able to count on about one-half of their nominees upholding their oath to the Constitution, it doesn't take a genius to do the math. Despite Republican presidents making far more Supreme Court nominations than Democratic presidents, with Democrats batting nearly a thousand, and Republicans batting only about .500 — at best — it is no wonder that the Supreme Court is as bad



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as it has been.

In the rest of the book, Cruz focuses on critical Supreme Court decisions over the years, making his case how every single Supreme Court nomination must be taken very seriously. For example, Cruz notes that in the case *District of Columbia v. Heller*, while the Court recognized that the Second Amendment protects the right of *individual* American citizens to keep and bear arms, it was only a 5-4 decision. Four justices — all named by Democrat presidents — were prepared to say that no such individual right is protected by the Second Amendment. There is no doubt that former Vice President Joe Biden would follow suit and name another anti-Second Amendment justice to the Supreme Court.



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