

Robert Bork Supreme Court nomination

President Ronald Reagan nominated Judge Robert Bork to serve as an Associate Justice of the United States Supreme Court on July 1, 1987. The U.S. Senate rejected his nomination, 42–58.^[1] Of the 42 Yea votes, 40 came from Republicans and 2 from Democrats. The Nay votes were from 52 Democrats and 6 Republicans.

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Nomination

Supreme Court Justice Lewis Powell was considered a moderate, often referred to as a "swing vote" in close decisions. After he announced his retirement on June 26, 1987,^[2] Senate Democrats had asked liberal leaders to form a "solid phalanx" to oppose an "ideological extremist" replacement to Powell; Democrats warned Reagan there would be a fight over the nomination if Bork were to be the nominee.^[3]

President Reagan nominated Bork for the seat on July 1, 1987.^[4] Bork had long been interested in the position; President Richard Nixon promised him the next seat on the Supreme Court following Bork's compliance in the controversial "Saturday Night Massacre" of October 1973. Nixon was unable to carry out the promise before his resignation in August 1974.^[5]

Within 45 minutes of Bork's nomination to the Court, Senator Ted Kennedy (D-MA) took to the Senate floor with a strong condemnation of Bork in a nationally televised speech, declaring:

Robert Bork's America is a land in which women would be forced into back-alley abortions, blacks would sit at segregated lunch counters, rogue police could break down citizens' doors in midnight raids, and schoolchildren could not be taught about evolution, writers and artists could be censored at the whim of the Government, and the doors of the Federal courts would be shut on the fingers of millions of citizens.^[6]

On July 5, 1987, NAACP executive director Benjamin Hooks described their position on the Bork nomination: "We will fight it all the way—until hell freezes over, and then we'll skate across on the ice."^[7] A brief was prepared for Joe Biden, head of the Senate Judiciary Committee, called the *Biden Report*. Bork later said in his book *The Tempting of America* that the report "so thoroughly misrepresented a plain record that it easily qualifies as world class in the category of scurrility".^[8] TV ads produced by People For the American Way and narrated by Gregory Peck attacked Bork as an extremist. Along with Kennedy's speech, these ads successfully fueled widespread public skepticism of Bork's nomination. The rapid response of Kennedy's "Robert Bork's America" speech stunned the Reagan White House; though conservatives considered Kennedy's accusations slanderous,^[9] the attacks went unanswered for two and a half months.^[10]



President Reagan and Bork, 1987

A hotly contested United States Senate debate over Bork's nomination ensued, partly fueled by strong opposition by civil and women's rights groups concerned with Bork's stated desire to roll back civil rights decisions of the Warren and Burger courts, and his opposition to the federal government's right to impose standards of voting fairness upon the states. Bork is one of only four Supreme Court nominees to ever be opposed by the ACLU, along with William Rehnquist, Samuel Alito and Brett Kavanaugh.^[11] Bork was also criticized for being an "advocate of disproportionate powers for the executive branch of Government, almost executive supremacy,"^[12] as demonstrated by his role in the "Saturday Night Massacre" during Richard Nixon's Watergate scandal.

During debate over his nomination, Bork's video rental history was leaked to the press, which led to the enactment of the 1988 Video Privacy Protection Act. His video rental history was unremarkable, and included such harmless titles as *A Day at the Races*, *Ruthless People*, and *The Man Who Knew Too Much*. The list of rentals was originally printed by Washington, D.C.'s *City Paper*.^{[13][14]}

To pro-choice legal groups, Bork's originalist views and his belief that the Constitution does not contain a general "right to privacy" were viewed as a clear signal that, should he be named to the Supreme Court, he would vote to reverse the Court's 1973 decision in *Roe v. Wade*. These groups also claimed that Bork's second marriage to a former Roman Catholic nun would allow her to influence his decisions on the abortion issue. Bork himself became a Catholic in 2003. Accordingly, a large number of left-wing groups mobilized to press for Bork's rejection, and his confirmation hearings became an intensely partisan battle. Bork was faulted for his bluntness before the committee, including his criticism of the reasoning underlying *Roe v. Wade*. Simultaneously, however, his supporters expressed frustration that some of Bork's most controversial and conservative views, including those on the scope of the First Amendment and the Equal Protection clause of the Fourteenth Amendment, as expressed in his writings and past opinions, had been suddenly moderated for his testimony before the Committee.^[15]

As Chairman of the Judiciary Committee, Senator Joe Biden presided over Bork's hearing.^[16] Biden stated his opposition to Bork soon after the nomination, reversing an approval in an interview of a hypothetical Bork nomination he had made the previous year and angering conservatives who thought he could not conduct the hearings dispassionately.^[17] At the close of the hearings, Biden won praise for conducting the proceedings fairly and with good humor and courage, as his 1988 presidential campaign collapsed in the middle of the hearings.^{[17][18]} Rejecting some of the arguments that other Bork opponents were making,^[16] Biden framed his discussion around the belief that the Constitution provides rights to liberty and privacy that extend beyond those explicitly enumerated in the text, and that Bork's strong originalism was ideologically incompatible with that view.^[18]

Confirmation vote

On October 6, Bork's nomination was rejected in the committee by a 9–5 vote.^[18] Since a committee rejection made a rejection by the full (Democratic) Senate extremely likely, Bork was widely expected to concede defeat and withdraw his name from a floor consideration.^[15] However, three days later, Bork announced his belief that:

There should be a full debate and a final Senate decision. In deciding on this course, I harbor no illusions. But a crucial principle is at stake. That principle is the way we select the men and women who guard the liberties of all the American people. That should not be done through public campaigns of distortion. If I withdraw now, that campaign would be seen as a success, and it would be mounted against future nominees. For the sake of the Federal judiciary and the American people, that must not happen. The deliberative process must be restored.^[19]

Faced with certain defeat, Bork's political support fell silent; Bork would even express disappointment with Reagan's tepid continued endorsement. On October 23, 1987, the Senate rejected Bork's confirmation, with 42 Senators voting in favor and 58 voting against. Democratic Senators David Boren (OK) and Ernest Hollings (SC) voted in favor, with Republican Senators John

Chafee (RI), Bob Packwood (OR), Arlen Specter (PA), Robert Stafford (VT), John Warner (VA) and Lowell Weicker (CT) all voting nay. The vacant seat on the court to which Bork was nominated eventually went to Judge Anthony Kennedy (Douglas Ginsburg was next to be nominated, but withdrawn).

State	Senator	Party	Vote
<u>Alabama</u>	<u>Howell Heflin</u>	D	Nay
<u>Alabama</u>	<u>Richard Shelby</u>	D	Nay
<u>Alaska</u>	<u>Ted Stevens</u>	R	Yea
<u>Alaska</u>	<u>Frank Murkowski</u>	R	Yea
<u>Arizona</u>	<u>Dennis DeConcini</u>	D	Nay
<u>Arizona</u>	<u>John McCain</u>	R	Yea
<u>Arkansas</u>	<u>Dale Bumpers</u>	D	Nay
<u>Arkansas</u>	<u>David Pryor</u>	D	Nay
<u>California</u>	<u>Alan Cranston</u>	D	Nay
<u>California</u>	<u>Pete Wilson</u>	R	Yea
<u>Colorado</u>	<u>William L. Armstrong</u>	R	Yea
<u>Colorado</u>	<u>Tim Wirth</u>	D	Nay
<u>Connecticut</u>	<u>Lowell Weicker</u>	R	Nay
<u>Connecticut</u>	<u>Chris Dodd</u>	D	Nay
<u>Delaware</u>	<u>William Roth</u>	R	Yea
<u>Delaware</u>	<u>Joe Biden</u>	D	Nay
<u>Florida</u>	<u>Lawton Chiles</u>	D	Nay
<u>Florida</u>	<u>Bob Graham</u>	D	Nay
<u>Georgia</u>	<u>Sam Nunn</u>	D	Nay
<u>Georgia</u>	<u>Wyche Fowler</u>	D	Nay
<u>Hawaii</u>	<u>Daniel Inouye</u>	D	Nay
<u>Hawaii</u>	<u>Spark Matsunaga</u>	D	Nay
<u>Idaho</u>	<u>James A. McClure</u>	R	Yea
<u>Idaho</u>	<u>Steve Symms</u>	R	Yea
<u>Illinois</u>	<u>Alan J. Dixon</u>	D	Nay
<u>Illinois</u>	<u>Paul Simon</u>	D	Nay
<u>Indiana</u>	<u>Richard Lugar</u>	R	Yea
<u>Indiana</u>	<u>Dan Quayle</u>	R	Yea
<u>Iowa</u>	<u>Chuck Grassley</u>	R	Yea
<u>Iowa</u>	<u>Tom Harkin</u>	D	Nay
<u>Kansas</u>	<u>Bob Dole</u>	R	Yea
<u>Kansas</u>	<u>Nancy Kassebaum</u>	R	Yea
<u>Kentucky</u>	<u>Wendell Ford</u>	D	Nay
<u>Kentucky</u>	<u>Mitch McConnell</u>	R	Yea
<u>Louisiana</u>	<u>J. Bennett Johnston</u>	D	Nay
<u>Louisiana</u>	<u>John Breaux</u>	D	Nay
<u>Maine</u>	<u>William Cohen</u>	R	Yea

State	Senator	Party	Vote
<u>Maine</u>	<u>George J. Mitchell</u>	D	Nay
<u>Maryland</u>	<u>Paul Sarbanes</u>	D	Nay
<u>Maryland</u>	<u>Barbara Mikulski</u>	D	Nay
<u>Massachusetts</u>	<u>Ted Kennedy</u>	D	Nay
<u>Massachusetts</u>	<u>John Kerry</u>	D	Nay
<u>Michigan</u>	<u>Donald Riegle</u>	D	Nay
<u>Michigan</u>	<u>Carl Levin</u>	D	Nay
<u>Minnesota</u>	<u>Rudy Boschwitz</u>	R	Yea
<u>Minnesota</u>	<u>David Durenberger</u>	R	Yea
<u>Mississippi</u>	<u>John C. Stennis</u>	D	Nay
<u>Mississippi</u>	<u>Thad Cochran</u>	R	Yea
<u>Missouri</u>	<u>John Danforth</u>	R	Yea
<u>Missouri</u>	<u>Kit Bond</u>	R	Yea
<u>Montana</u>	<u>John Melcher</u>	D	Nay
<u>Montana</u>	<u>Max Baucus</u>	D	Nay
<u>Nebraska</u>	<u>David Karnes</u>	R	Yea
<u>Nebraska</u>	<u>J. James Exon</u>	D	Nay
<u>Nevada</u>	<u>Chic Hecht</u>	R	Yea
<u>Nevada</u>	<u>Harry Reid</u>	D	Nay
<u>New Hampshire</u>	<u>Gordon J. Humphrey</u>	R	Yea
<u>New Hampshire</u>	<u>Warren Rudman</u>	R	Yea
<u>New Jersey</u>	<u>Bill Bradley</u>	D	Nay
<u>New Jersey</u>	<u>Frank Lautenberg</u>	D	Nay
<u>New Mexico</u>	<u>Pete Domenici</u>	R	Yea
<u>New Mexico</u>	<u>Jeff Bingaman</u>	D	Nay
<u>New York</u>	<u>Daniel Patrick Moynihan</u>	D	Nay
<u>New York</u>	<u>Al D'Amato</u>	R	Yea
<u>North Carolina</u>	<u>Jesse Helms</u>	R	Yea
<u>North Carolina</u>	<u>Terry Sanford</u>	D	Nay
<u>North Dakota</u>	<u>Quentin N. Burdick</u>	D	Nay
<u>North Dakota</u>	<u>Kent Conrad</u>	D	Nay
<u>Ohio</u>	<u>John Glenn</u>	D	Nay
<u>Ohio</u>	<u>Howard Metzenbaum</u>	D	Nay
<u>Oklahoma</u>	<u>David L. Boren</u>	D	Yea
<u>Oklahoma</u>	<u>Don Nickles</u>	R	Yea
<u>Oregon</u>	<u>Mark Hatfield</u>	R	Yea
<u>Oregon</u>	<u>Bob Packwood</u>	R	Nay

State	Senator	Party	Vote
<u>Pennsylvania</u>	<u>H. John Heinz III</u>	R	Yea
<u>Pennsylvania</u>	<u>Arlen Specter</u>	R	Nay
<u>Rhode Island</u>	<u>John Chafee</u>	R	Nay
<u>Rhode Island</u>	<u>Claiborne Pell</u>	D	Nay
<u>South Carolina</u>	<u>Strom Thurmond</u>	R	Yea
<u>South Carolina</u>	<u>Ernest Hollings</u>	D	Yea
<u>South Dakota</u>	<u>Larry Pressler</u>	R	Yea
<u>South Dakota</u>	<u>Tom Daschle</u>	D	Nay
<u>Tennessee</u>	<u>Jim Sasser</u>	D	Nay
<u>Tennessee</u>	<u>Al Gore</u>	D	Nay
<u>Texas</u>	<u>Lloyd Bentsen</u>	D	Nay
<u>Texas</u>	<u>Phil Gramm</u>	R	Yea
<u>Utah</u>	<u>Jake Garn</u>	R	Yea
<u>Utah</u>	<u>Orrin Hatch</u>	R	Yea
<u>Vermont</u>	<u>Patrick Leahy</u>	D	Nay
<u>Vermont</u>	<u>Robert Stafford</u>	R	Nay
<u>Virginia</u>	<u>John Warner</u>	R	Nay
<u>Virginia</u>	<u>Paul Trible</u>	R	Yea
<u>Washington</u>	<u>Daniel J. Evans</u>	R	Yea
<u>Washington</u>	<u>Brock Adams</u>	D	Nay
<u>West Virginia</u>	<u>Robert Byrd</u>	D	Nay
<u>West Virginia</u>	<u>Jay Rockefeller</u>	D	Nay
<u>Wisconsin</u>	<u>William Proxmire</u>	D	Nay
<u>Wisconsin</u>	<u>Bob Kasten</u>	R	Yea
<u>Wyoming</u>	<u>Malcolm Wallop</u>	R	Yea
<u>Wyoming</u>	<u>Alan K. Simpson</u>	R	Yea

The history of Bork's disputed nomination is still a lightning rod in the contentious debate over the limits of the "Advice and Consent of the Senate" that Article Two of the United States Constitution requires for judicial nominees of the President. Bork, unhappy with his treatment in the nomination process, resigned his appellate-court judgeship in 1988.

In 2011, twenty-four years after Bork's nomination was rejected, *New York Times* columnist Joe Nocera claimed that "[t]he Bork fight, in some ways, was the beginning of the end of civil discourse in politics...The anger between Democrats and Republicans, the unwillingness to work together, the profound mistrust—the line from Bork to today's ugly politics is a straight one." Nocera cited Democratic activist Ann Lewis, who wrote that if Bork's nomination "were carried out as an internal Senate debate, we would have deep and thoughtful discussions about the Constitution, and then we would lose."^[20]

Political scientist Scott Lemieux, writing in *The American Prospect*, disputes the view of Bork as a victim of "allegedly unfair treatment ... [leading] to a new area of political incivility," arguing that "Bork's originalism was for the most part intellectually shallow and politically motivated." Arguing that all of Kennedy's harsh charges were grounded in Bork's published legal opinions,

he wrote that "there's no reason for Democrats to abjure accurate statements merely because they're put in stark enough terms to be politically effective."^[21]

"Bork" as a verb

William Safire of *The New York Times* attributes "possibly" the first use of *bork* as a verb to *The Atlanta Journal-Constitution* of August 20, 1987. The word had in fact appeared a few days earlier, in a newspaper opinion piece dated August 11.^[22] Safire defines "to bork" by reference "to the way Democrats savaged Ronald Reagan's nominee, the Appeals Court judge Robert H. Bork, the year before."^[23] This definition stems from the history of the fight over Bork's nomination.^[9] Bork was widely lauded for his competence, but reviled for his political philosophy. In March 2002, the word was added to the *Oxford English Dictionary* under "bork"; its definition extends beyond judicial nominees, stating that people who bork others "usually [do so] with the aim of preventing [a person's] appointment to public office."

Perhaps the best known use of the verb *to bork* occurred in July 1991 at a conference of the *National Organization for Women* in *New York City*. Feminist *Florynce Kennedy* addressed the conference on the importance of defeating the nomination of *Clarence Thomas* to the U.S. Supreme Court. She said, "We're going to *bork* him. We're going to kill him politically ... This little creep, where did he come from?"^[24] However, Thomas was subsequently confirmed after a contentious confirmation hearing.

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