



The President Shall Nominate: How Congress Trumps Executive Power

Mitchel A. Sollenberger

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The Constitution clearly states that the president "shall nominate, and by and with the advice and consent of the Senate, shall appoint" individuals to positions in the executive and judicial branches; yet the process may sometimes seem murky. While much has been written about the confirmation phase of those appointments, far less attention has been paid to the pre-nomination process—until now.

In this groundbreaking book, Mitchel Sollenberger takes readers behind the scenes to explain what happens before presidents publicly announce their nominees. A comprehensive history of this process, his book shows how political practice has shaped the use of a power that the Constitution declared must be shared by the executive and legislative branches.

Drawing on unpublished letters and papers of presidents, senators, and other public figures, Sollenberger unravels the way this struggle has been viewed and resolved from George Washington's day to the present. He reveals the extent to which the political process has shaped the outcomes of particular appointments and how these outcomes have reflected the fundamental principle of shared power. Along the way, he sheds new light on issues related to express and implied power, the validity of the unitary executive model, the tension between politics and professionalism, and the limits of originalism and textualism in interpreting the appointment process.

Sollenberger documents how the president and Senate have worked with or against each other in managing the pre-nomination process, examining both the tradition of the president's consulting with senators and the Senate's numerous ways of killing a nomination. He also shows how the two branches have often sought compromise rather than test public patience, yet another testament to the genius of our system of checks and balances. And while past observers of the process have looked most closely at judicial appointments, Sollenberger casts a much wider net, while critiquing the "spoils era," civil service reform, and implications of the Pendleton Act before concluding with George W. Bush and his appointment of Michael Brown to FEMA.

The first major study of the pre-nomination phase, Sollenberger's work asks important questions about our constitutional balance of powers and shows us how the appointments clause should ideally operate in a republican form of government.

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