



U.S. Supreme Court Confirmation

On April 7, 2022, the U.S. Senate **confirmed Judge Ketanji Brown Jackson**, of the U.S. Court of Appeals for the District of Columbia, to serve as the 116th associate justice of the U.S. Supreme Court. All Democratic senators and three Republican senators voted in favor of her confirmation, making the final count 53-47. Her confirmation is historical as she will be the first Black woman to serve on the High Court. Despite the significance of her nomination and her qualifications to serve as a justice, including her legal pedigree, Judge Jackson’s confirmation vote fell largely along political party lines. Is it unusual for judicial confirmation votes to fall along party lines?

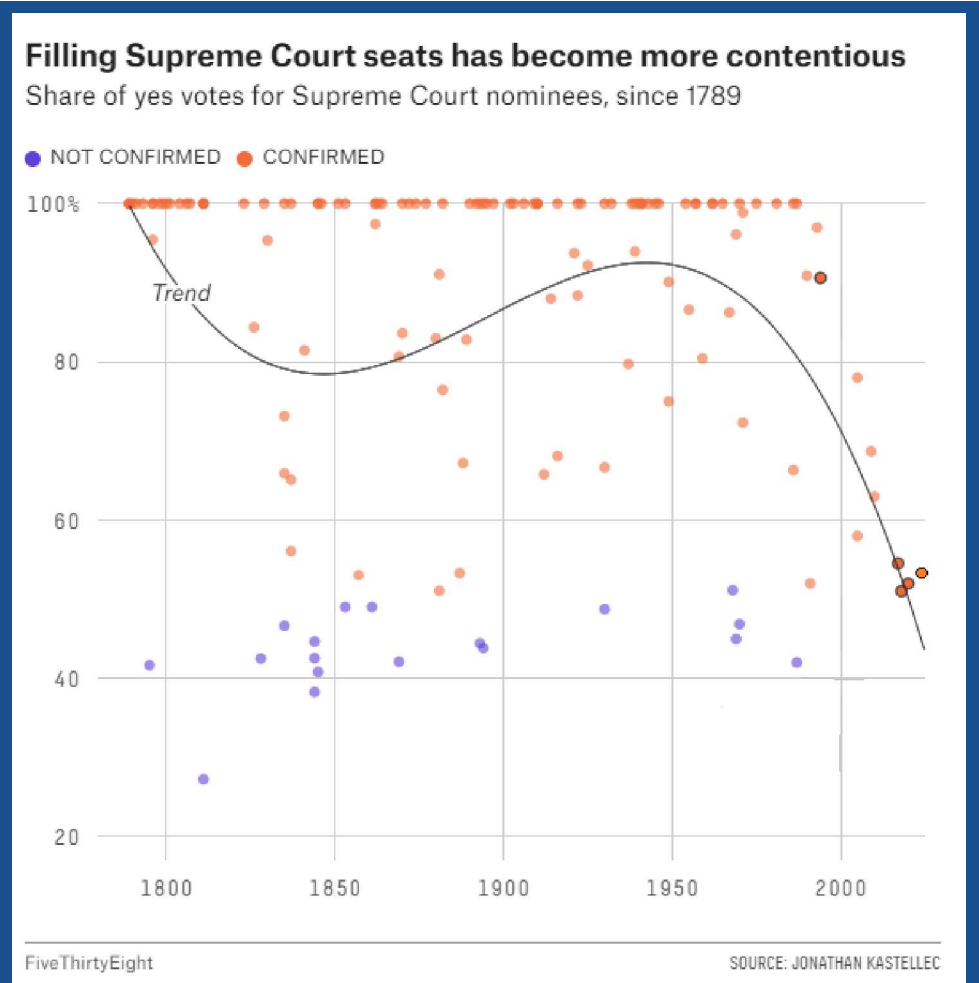
Historically, the U.S. Senate has taken **138 confirmation votes** on presidential nominations to the U.S. Supreme Court. Of these 138 votes, 71 of them recorded individual Senator’s votes, including whether they voted “yea” or “nay” on confirmation. The remaining 67 votes were **voice votes**, typically indicating little opposition. The last time a voice vote was taken to confirm a U.S. Supreme Court justice was in 1965 with the confirmation vote of **Associate Justice Abe Fortas**. A voice vote on a Supreme Court confirmation has never failed.

However, of the 71 recorded confirmation votes, the Senate has rejected 12 nominees. The **last failed confirmation vote** occurred in 1987 when Robert Bork was not confirmed. Of the 59 nominees remaining, 46 were supported by 60 percent or more of the Senate. The remaining 13 nominations? This is where the confirmation process gets interesting:

- Thirteen U.S. Supreme Court nominations have been confirmed with less than 60% support of the Senate since 1789, although “**advice and consent**” requires no percentage of votes for confirmation
- Six of these 13 confirmation votes were for current justices of the court [Clarence Thomas (1991), Samuel Alito (2006), Neil Gorsuch (2017), Brett Kavanaugh (2018), Amy Coney Barrett (2020), Ketanji Brown Jackson (2022)]
- Four of these close votes happened in the last six years

This breakdown would suggest that narrow U.S. Supreme Court confirmation votes are a modern situation, despite presidents from both parties nominating well qualified individuals to serve as justices. In fact, the last nominee to receive a unanimous confirmation vote was Judge **Anthony Kennedy**, in 1988 (97-0). The 2005 nomination of Judge **John Roberts** to be Chief Justice is the last time a nominee received a majority of minority party votes (Democratic Party). The 2020 nomination of Judge **Amy Coney Barrett** was the first time since 1869 that a Supreme Court nominee was confirmed without minority party support (Democratic Party).

While we often focus on **judicial independence**, the nomination of a Supreme Court justice is more of a political process where partisanship plays an important role in the confirmation process. Presidents find nominees they believe will best exemplify their political positions after they leave the White House. This approach is not new and can be seen in numerous historical examples from George Washington’s appointment of all Federalists to the newly established U.S. Supreme Court, to the “**midnight judges**” appointed by John Adams, to Franklin Delano Roosevelt’s “**court-packing plan**” in 1937. Even while understanding presidential motivations, the Senate has still overwhelmingly supported presidential nominees. What is new is this unusual shift of deep party politics becoming the norm for confirmation to the Supreme Court.



To Think and To Do: Review this line graph. What do trends do you notice? Based on what you notice, would you agree or disagree with the statement that filling Supreme Court seats has become more contentious? Explain.

