Nominate and Confirm

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Following guidelines set in the Judiciary Act of 1789, George Washington was the only president to fill the entire body of federal judges — 28 judges to U.S. district courts and, according to Mount Vernon, appointing a “record ten justices, including two Chief Justices” to the Supreme Court. John Jay was the first Chief Justice and there were five Associate Justices. The justices were well-known as they were required to ride circuit court twice a year in each judicial district.

Before 1916, the Senate Judiciary Committee met in private to consider nominees. No nominee was present. Louis Brandeis, Jewish and considered a radical because of his decisions against the corporate world, was not invited by the committee, but it invited witnesses to testify for the first time. The confirmation hearings of 1955 were the first to have the nominee present and established the practice. In 1981 Sandra Day O’Connor was not only the first female nominee to the Court, but also the first whose hearings were televised.

Since five Chief Justices had previously served as Associate Justices, there have been 115 Justices since February 1, 1790, when the Supreme Court first met in New York City, the Nation’s Capital at that time. When President Biden’s nominee, Judge Ketanji Brown Jackson, was confirmed on April 7, she became the 116th Supreme Court Justice, the sixth female and the first Black female justice.

In this resource guide, we focus on the nomination and confirmation process. The Post editorial board and columnists as well as editorial cartoonists give their opinions about the Judge Jackson hearings and the institution itself. As Sandra Day O’Connor said, “You’re there to make legal decisions based on the law and the Constitution of the United States.” This is what Judge Ketanji Brown Jackson will do as the 116th Justice and first Black female Justice of the Supreme Court.
How a Supreme Court nominee becomes a justice

A potential justice nominated by the president must win confirmation in the Senate

BY ASHLYN STILL AND DANIELA SANTAMARIÑA

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President Biden announced he will nominate federal judge Ketanji Brown Jackson to fill retiring Justice Stephen G. Breyer’s seat on the Supreme Court. Breyer, 83, has served on the court for nearly three decades and plans to retire after the current term concludes.

Here’s how the confirmation process works for a Supreme Court nominee:

President

NOMINATION
The president chooses a candidate who is well-qualified as well as someone who generally serves his political interests.

Senate Judiciary Committee

VETTING
The committee checks the nominee’s credentials and background, including finances and past legal decisions.

FIRST HEARING
The committee questions the nominee’s qualifications. The nominee is given a chance to respond.

COMMITTEE VOTE
If a majority of the committee opposes the nominee, tradition calls for the panel to send the nomination to the full Senate with the recommendation that it be rejected.

Full Senate

DEBATE ON SENATE FLOOR
Led by the chair of the Judiciary Committee, the Senate debates the nomination.

FILIBUSTER
Republicans voted in 2017 to end the 60-vote threshold to force a vote on Supreme Court nominees.

FINAL VOTE
Simple 51-vote majority required.

COMMITTEE BREAKDOWN
R 11
D 11

BACK TO THE START
A nominee may withdraw from consideration at any time, as Harriet Miers did in 2006.

50* 50

*Includes two independents who caucus with the Democrats. Democrats have the majority with Vice President Harris as tiebreaker.
Republicans rammed through a change in Senate rules in 2017 to ensure the confirmation of President Donald Trump’s first nominee, Neil M. Gorsuch, with a simple majority vote after blocking President Barack Obama from filling the vacancy for much of 2016. That change will probably smooth the path for confirmation, although the Senate remains evenly divided, with Vice President Harris casting the tiebreaking vote.

In fall 2020, despite the dying wishes of Justice Ruth Bader Ginsburg, Republicans pushed through the nomination of Amy Coney Barrett in a matter of weeks. Trump nominated her on Sept. 26, and she was confirmed Oct. 26, eight days before the election. Between 1975 and 2016, it took about 70 days on average to confirm a justice.

Jackson’s confirmation hearings are scheduled to begin on March 21. Senate Judiciary Committee Chairman Richard J. Durbin (D-Ill.) set a goal of confirming Biden’s nominee before the Easter recess, which is scheduled to begin April 8. This would mean that the confirmation process would take 43 days or fewer.

“President Biden’s nominee will receive a prompt hearing in the Senate Judiciary Committee, and will be considered and confirmed by the full United States Senate with all deliberate speed,” Sen. Charles E. Schumer (D-N.Y.) said in a statement.

Although the ideological balance of the court is unlikely to shift significantly, Biden has a chance to make good on his campaign promise to nominate the first Black female justice. The Senate can begin the confirmation process while Breyer is still on the bench, according to senior Senate aides.
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Justice Stephen G. Breyer, 83, will retire at the end of the Supreme Court’s term, clearing the way for President Biden to make his first nomination to the nation’s highest judicial body.

As a candidate, Biden said that if given the opportunity, he would nominate an African American woman — who, if confirmed, would become the first Black female Supreme Court justice.

Speculation on whom Biden might choose began quickly after news reports emerged of Breyer’s planned retirement. Here’s a quick guide to some of the top contenders, as well as some others under consideration.

A guide to the Black female judges who are contenders to replace Justice Breyer

BY ANNABELLE TIMSIT, SEUNG MIN KIM, ANN E. MARIMOW AND ELLEN FRANCIS

Originally Published January 27, 2022

From left to right: Judge J. Michelle Childs during her 2010 nomination hearing in Washington; Leondra Kruger, an associate justice of the California Supreme Court; Judge Ketanji Brown Jackson listens to arguments as local high school students observe a reenactment of a landmark Supreme Court case at the U.S. Court of Appeals for the D.C. Circuit.
Ketanji Brown Jackson

Ketanji Brown Jackson, 51, serves as a judge on the U.S. Court of Appeals for the D.C. Circuit. She was born in Washington, the daughter of two graduates of historically Black colleges and universities who instilled in her a sense that she could do or be anything she set her mind to, she recalled in a speech in March.

In June, Biden nominated Jackson to fill Merrick Garland’s seat on the D.C. Circuit after Garland was confirmed as attorney general. That fueled speculation that she was on the president’s shortlist for potential justices because the D.C. court is considered the second-most powerful in the country and because high court nominees are traditionally chosen from the federal appeals bench.

Jackson has clerked for Breyer and for two other federal judges. She attended Harvard University as an undergraduate and a law student, serving as an editor for the Harvard Law Review. And her experience as a public defender has endeared her to the more liberal base of the Democratic Party.

Leondra Kruger

Leondra Kruger, 45, is a California Supreme Court justice. At the U.S. Department of Justice, she served as deputy solicitor general, the federal government’s second-ranking representative in arguments at the Supreme Court, before becoming one of the youngest people ever nominated to the high court in California, taking her seat in 2015.

During her tenure in the Office of the Solicitor General, Kruger argued 12 cases before the Supreme Court, according to her court biography.

She has previously rebuffed offers from the White House to take a job in the administration.

Kruger is from California and attended Harvard as an undergraduate, followed by Yale University as a law student, serving as editor in chief of the Yale Law Journal. She clerked for Supreme Court Justice John Paul Stevens and for a judge on the U.S. Court of Appeals for the D.C. Circuit.

J. Michelle Childs

J. Michelle Childs, 55, has served on the U.S. District Court for the District of South Carolina for more than a decade. Biden unexpectedly nominated her last month to serve on the high-profile D.C. Circuit, surprising Washington-area lawyers who had anticipated a pick with local ties.

Childs served in state government on the Workers’ Compensation Commission and was deputy director of South Carolina’s Department of Labor. She was born in Detroit and moved to South Carolina as a teen and has said she was the first Black female partner in a major law firm in the state. She holds undergraduate and graduate degrees from state schools in Florida and South Carolina.

A favorite of one of Biden’s most influential congressional allies, House Majority Whip James E. Clyburn (D-S.C.), Childs faces a confirmation hearing next week for her nomination to the D.C. Circuit.

Clyburn and Rep. G.K. Butterfield (D-N.C.) have said in interviews that Childs would meet Biden’s frequently stated goal of bringing more diverse backgrounds to the Supreme Court — not just because she is a Black woman, but also because she did not attend an Ivy League law school.

“Joe Biden has talked about the kind of experiences he’d bring into the presidency,” Clyburn said. “He was brought up in Scranton, in Delaware, educated in the public schools. That’s who Michelle Childs is.”
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Anita Earls
Others under consideration, according to people familiar with the matter, include Anita Earls, a North Carolina Supreme Court justice; New York University law professor Melissa Murray; and Minnesota federal District Judge Wilhelmina “Mimi” Wright. These people spoke on the condition of anonymity to discuss private deliberations.

Earls is an associate justice on the North Carolina Supreme Court with a Yale Law School degree. She was appointed by President Bill Clinton as deputy assistant attorney general in the Civil Rights Division of the Justice Department in 1998. “I love the job I have and will continue to serve the people of North Carolina,” she said this week, adding that she was “honored for the people who watch the court to include me on a list like this and this distinguished list of women.”

At 61 years old, she is probably too old to be seriously considered for a lifetime appointment to the U.S. Supreme Court.

Wilhelmina Wright
Wilhelmina “Mimi” Wright is a Minnesota federal district court judge appointed by President Barack Obama who has served since 2016. The 58-year-old, who is Minnesota's first Black female federal judge, is also described as the only jurist in the state’s history to serve on the state district court, appellate court and state Supreme Court.

She is believed to be a favorite of Sen. Amy Klobuchar (D-Minn.), a member of the Judiciary Committee, which processes Supreme Court and other judicial nominations.

Melissa Murray
Melissa Murray, 46, is a constitutional scholar at New York University and authority on reproductive rights and family law.

She clerked for Justice Sonia Sotomayor when Sotomayor served on the U.S. Court of Appeals for the 2nd Circuit. Murray is a close observer of the Supreme Court, and regularly comments about the justices as an MSNBC contributor and through a podcast with others called Strict Scrutiny.

Murray has described the pledge to nominate a Black woman to the Supreme Court as both “amazing” and “overdue.” She has written two books about reproductive rights, and was previously on the faculty of the University of California’s Berkeley Law, where she served as interim dean.

Robert Barnes and John Wagner contributed to this report.
Biden makes historic pick for top court

Jackson would be the first Black woman on the high court, and the first justice since Thurgood Marshall with significant experience as a criminal defense attorney

BY TYLER PAGER, SEAN SULLIVAN, SEUNG MIN KIM AND ANN E. MARIMOW

*Originally Published February 26, 2022*

President Biden announced Friday the nomination of federal Judge Ketanji Brown Jackson to replace retiring Justice Stephen G. Breyer, a historic choice that fulfills the president’s pledge to nominate the first Black woman to the Supreme Court and would make Jackson, 51, just the third African American in the high court’s 233-year history.

A former public defender, Jackson served as a trial court judge in Washington for eight years before Biden elevated her last year to the influential U.S. Court of Appeals for the D.C. Circuit. She was confirmed to that court after a relatively uncontentious Senate hearing and with the backing of three Republican lawmakers.

Biden introduced Jackson on Friday afternoon at the White House, praising her as “someone with extraordinary character” who “will bring to the Supreme Court an independent-minded, uncompromising integrity.” The president, who spent weeks considering whom to nominate, touted Jackson’s varied legal experience and her personal background.

“For too long, our government and our courts haven’t looked like America,” Biden said. “I believe it’s time that we have a court
that reflects the full talents and greatness of our nation, with a nominee of extraordinary qualifications, and that we inspire all young people to believe that they can one day serve their country at the highest level.”

Jackson’s confirmation would not affect the current conservative 6-to-3 supermajority on the court. She would be likely to vote with liberals on the most contentious issues facing the Supreme Court, including affirmative action, abortion, LGBTQ protections and gun rights — but she would be replacing another liberal more than 30 years her senior. And while Biden described Jackson as a “consensus-builder,” the court’s right flank is moving fast and not particularly looking for compromise.

Jackson, who would join a significantly diminished liberal wing if confirmed, would bring a diverse personal and professional background to the high court. She was a law clerk for Breyer in 1999, and she helped shape federal sentencing policy on the U.S. Sentencing Commission after stints at private law firms.

At the federal public defender’s office in D.C. for 2½ years, Jackson represented indigent clients in criminal cases and detainees held at Guantánamo Bay, Cuba. She would be the first justice since Thurgood Marshall with significant experience as a criminal defense attorney, a trait often touted by her supporters.

Jackson’s Ivy League credentials — she’s a Harvard Law graduate and former editor of the Harvard Law Review — are similar to other modern justices, but the importance of her nomination is singular. She would be the first Black woman on the nation’s highest court. And for the first time in history, there would be near-parity on the court, with five men and four women.

As recently as 2009, there was only one woman.

“I can only hope that my life and career, my love of this country and the Constitution, and my commitment to upholding the rule of law and the sacred principles upon which this great nation was founded will inspire future generations of Americans,” Jackson said at the White House.

In her brief remarks, she highlighted her family’s diverse background and touched on points that could resonate widely: her faith, her relatives’ careers in the police and military, the importance of her family. Jackson began by thanking God “for delivering me to this point,” and she also did not neglect to mention an uncle who landed in prison after struggling with drugs.

If confirmed, she would join a bench that includes Justices Clarence Thomas and Sonia Sotomayor, meaning a third of the court for the first time would be made up of people of color.

Civil rights groups fervently applauded the announcement, saying it was deeply unjust that an institution with so much influence over Americans’ lives had been limited to White men for so long, and calling Jackson’s nomination a big step forward.

“This is a tremendously historic moment for our nation and our community in particular,” NAACP President Derrick Johnson said in a statement. “President Biden has met this moment with an extraordinarily qualified nominee, who has stellar credentials and an impeccable background.”

Biden announced Jackson’s nomination exactly two years after vowing on a South Carolina debate stage to nominate the first Black woman if a Supreme Court vacancy emerged during his presidency.

After Biden was elected, liberal activists mounted an aggressive public campaign to persuade Breyer, now 83, to retire, warning if he did not step down before the midterms, Democrats could lose another reliable liberal vote on the court. Former president Donald Trump placed three justices on the high court, which fundamentally reshaped the Supreme Court’s ideological balance.

In addition to Jackson, Biden interviewed J. Michelle Childs, a federal judge in South Carolina, and Leondra Kruger, a justice...
on the California Supreme Court. Biden called Jackson on [the night of Feb. 24] to offer her the nomination.

Childs’s candidacy, in particular, was backed by House Majority Whip Rep. James E. Clyburn (D-S.C.), whose endorsement of Biden ahead of the South Carolina primary revived his presidential campaign. Clyburn praised Jackson’s selection on Friday though showed no remorse for his public campaign in support of Childs.

"I’m Black, and I’m a Southerner, and I’ll do everything I can to promote Southerners and Black people who are deserving of attention for public office,” Clyburn said Friday. “When you play the game you may not always win. But if you don’t play the game, you will never win. And so I advocated for Judge Childs. She is an outstanding judge.”

While Biden’s commitment to make a historic nomination of a Black woman was applauded by Black leaders and the civil rights community, some Republicans complained that the president was applying a racial litmus test.

Along with his selection of Vice President Harris as his running mate, Biden’s pattern of elevating women and minorities to prominent government posts is now likely to be among his biggest legacies. Biden’s choice could also provide Democrats a political boost by energizing Black voters ahead of November’s midterms especially as the president’s popularity has been sagging, including among some African American voters who say he has not fulfilled his promises of sweeping change.

Though immediately, the nomination will kick off a Senate fight that is likely to be bitter, if recent confirmation battles are any indication. Liberal and civil rights groups are ready to tout Jackson’s qualifications and temperament and push back against any attacks they see as racist or sexist. Republicans and conservatives, meanwhile, have been drawing up plans to dismiss any Biden nominee as radical and outside the mainstream.

In a statement, Senate Minority Leader Mitch McConnell (R-Ky.) said he looked forward to reviewing Jackson’s record but also quickly signaled he was likely to oppose her nomination.

“I voted against confirming Judge Jackson to her current position less than a year ago,” McConnell said. “Since then, I understand that she has published a total of two opinions, both in the last few weeks, and that one of her prior rulings was just reversed by a unanimous panel of her present colleagues on the D.C. Circuit. I also understand Judge Jackson was the favored choice of far-left dark-money groups that have spent years attacking the legitimacy and structure of the Court itself.”

But the White House is hopeful Jackson can get bipartisan support. In introducing her, Biden underscored that Jackson has already been confirmed by the Senate three times, and Sens. Susan Collins (Maine), Lindsay O. Graham (S.C.) and Lisa Murkowski (Alaska), all backed Jackson when she was confirmed to the D.C. Circuit in a 53-to-44 vote.

Still, the stakes are significantly higher for a Supreme Court nominee, and there is no guarantee that the three GOP senators who backed her last time would do so again for the high court.

Jackson was born in the District of Columbia in 1970 and grew up in Miami in a family that valued public service. Her parents began their careers as public school teachers. Two uncles were law enforcement officers, including one who became Miami’s police chief.

A high school debate champion and class president, Jackson earned her undergraduate and law degrees from Harvard, where she met her future husband Patrick Jackson, a surgeon. She went on to work as a law clerk for three federal judges, including Breyer.

“Justice Breyer, the members of the Senate will decide if I fill your seat, but please know that I could never fill your shoes,” Jackson said Friday.

In eight years on the U.S. District Court, Jackson has presided over hundreds of cases, and Republican lawmakers are likely to revive questions about several of her rulings against the Trump administration. She ordered former president Donald Trump’s former White House counsel Donald McGahn to comply with a House subpoena, for example, declaring “presidents are not kings.”

Jackson also issued a nationwide preliminary injunction that blocked the Trump administration from expanding its power to deport migrants who illegally
entered the United States by using a fast-track process.

At the courthouse just blocks from the U.S. Capitol, Jackson is known for her collegiality and as a skilled writer who works long hours. She reads final drafts of her opinions aloud while standing at a lectern to ensure her writing is accessible to a broader audience. In her chambers, the maroon and gold embossed set of U.S. Code books is not purely decorative but an integral part of Jackson’s process. She reminds her law clerks to “always start with the books.”

During her varied legal career, Jackson served as a vice chair of the U.S. Sentencing Commission, giving her experience working on a multi-member bipartisan panel that required compromise to shape federal sentencing policy. Her former law clerk Jo-Ann Sagar, a lawyer in D.C., said Jackson would bring that same approach to the Supreme Court.

“She considers herself a lifelong learner,” said Sagar, who also clerked for Breyer and Justice Elena Kagan. “Someone who comes to the bench with those perspectives will be not just a welcome addition to the bench, but someone who moves the court in a welcome direction.”

On the U.S. Court of Appeals for the D.C. Circuit, Jackson was part of a three-judge panel this fall that unanimously rejected Trump’s bid to block the release of White House records to the congressional committee investigating the Jan. 6 attack on the U.S. Capitol. The Supreme Court affirmed the decision in January with only Justice Clarence Thomas noting dissent. Last summer, she allowed the Biden administration’s pandemic-related moratorium on evictions to remain in place before the Supreme Court later blocked the measure. And in her first appellate ruling in February, Jackson wrote a unanimous opinion siding with labor unions in a challenge to a Trump administration change in collective bargaining rules.

At her D.C. Circuit confirmation hearing last spring, Jackson committed to being a neutral, fair-minded judge in response to questions from Republicans.

“I know very well what my obligations are, what my duties are, not to rule with partisan advantage in mind, not to tailor or craft my decisions in order to try to gain influence or do anything of the sort,” Jackson told the Senate Judiciary Committee.

“It doesn’t make a difference whether or not the argument is coming from a death row inmate or the president of the United States,” she said. “I’m not injecting my personal views.”

Senate Democrats have been eager for Biden to make his Supreme Court selection and move quickly on confirmation, although the initial hope of Senate Majority Leader Charles E. Schumer (D-N.Y.) that the process would take no more than a month now appears unlikely.

Democrats want to be sure that all 48 Democratic senators, plus the two independents who vote with them, are present for any confirmation vote. Various health considerations, including covid-19 diagnoses, have often foiled Senate leaders’ plans in recent months, and Sen. Ben Ray Luján (D-N.M.), who suffered a stroke in late January, is expected to return to Washington sometime in March.

Biden urged the Senate to move quickly to confirm Jackson. “Her opinions are always carefully reasoned, tethered to precedent, and demonstrate respect for how the law impacts everyday people,” he said. “It doesn’t mean she puts her thumb on the scale of justice one way or the other, but she understands the broader impact of her decisions.”

Robert Barnes contributed to this report
The Steps to Confirmation

The Constitution established three branches of government. All are equal in the checks and balances of legislative, executive and judicial branches. In the judicial branch, the Supreme Court is the final arbiter of appeals and evaluator of the constitutionality of laws. The process by which a new justice is selected, nominated and confirmed has clear steps to follow.

1. How many justices comprise the Supreme Court?

2. When may a vacancy occur on the Court?
   a.
   b.
   c.

3. Which branch of government nominates the person to fill a vacancy on the Court?

4. Who helps with finding the most qualified person to fill the vacancy?

5. After the president announces the nominee, what next steps happen before the confirmation hearings? Explain both steps.
   a. Vetting
   b. Visiting

6. Who in the legislative branch is in charge of the confirmation hearings? Give details of the composition of this group.

7. What happens after the confirmation hearings?
   a. If the nominee is approved by the committee?
   b. If the committee opposes the nominee?

8. Who gets the final vote to confirm in its “advise and consent” role?
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AN INDEPENDENT NEWSPAPER

An opportunity to enlighten

Judge Jackson’s confirmation hearing is not the time for grandstanding by GOP senators

W hen Ketanji Brown Jackson is sworn in Monday before the Senate Judiciary Committee, she will be the first Black woman to sit in the hot seat of a Supreme Court nominee. Comments from some GOP senators suggest that her confirmation hearings will be less contentious than other recent ones, in part because many Republicans do not want to be seen attacking a historic nominee and in part because adding her to the court would not shift its ideological balance.

Even so, there is likely to be some grandstanding on the part of some Republican senators, who have indicated that they will try to score points with the far right by assailing Judge Jackson. Which would be a shame, because it would squander what should be a more productive opportunity to explore her judgment and judicial temperament.

Senators should start by asking what commitments, if any, she made to President Biden before he nominated her. This question has become more relevant to ask following the presidency of Donald Trump, who did not hide his expectation that his nominees would rule for his personal benefit. The answer would also help elucidate the extent to which the nation’s leaders are moving toward applying ideological litmus tests to judicial nominees.

The court’s commitment to stare decisis — the principle that the court should only overturn precedent in exceptional circumstances — is increasingly in doubt. When does Judge Jackson believe it is appropriate for justices to nullify previous majorities’ judgments? Originalism is ascendant on the court’s conservative wing. What are Judge Jackson’s views on this philosophy, and how should the court properly interpret the Framers’ words?

If past confirmation hearings are any guide, Judge Jackson will strive to say little, particularly about substantive issues that the court might consider. But she should be able to address questions about the court’s structure and rules. How does she feel about allowing cameras in the chamber, a long-overdue change? Some Democrats favor packing the court with more than nine justices; this is a bad idea that would hasten the court’s politicization. By contrast, establishing an orderly term-limit system for justices might reduce some of the heat. The justice Judge Jackson has been tapped to replace, Stephen G. Breyer, has endorsed this change. What does she think?

Reports suggest that some Republicans will seek to attack Judge Jackson’s representation of criminal defendants when she was a public defender and private attorney, alleging she has been easy on sex criminals and raising questions about her work representing Guantánamo Bay prisoners. Smearing Judge Jackson for her past clients would be particularly egregious. She would be the first former public defender to sit on the nation’s highest court, bringing to the bench a background that should be considered an asset.

The public rarely gets to hear at length from the nine people who are the ultimate arbiters of some of the most divisive and momentous questions that arise in American society. While the political realities of an election-year confirmation process will no doubt incline her to be cautious, Judge Jackson and the senators questioning her should maximize the potential of her hearings to be an opportunity to enlighten.

— March 21, 2022
RUTH MARCUS

Forget advise and consent.
This is smear and degrade.

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The pretense is gone — the pretense that Supreme Court confirmation hearings are about determining nominees’ fitness for office, gleaning a sense of their legal acumen and approach to judging, and gathering the information necessary to exercise a solemn senatorial power.

No longer. Advise and consent has yielded to smear and degrade. The goal is not to illuminate but to tarnish: If a nominee can’t be stopped, at least the other side can inflict some damage on her and the opposition party.

The confirmation hearings just concluded for Supreme Court nominee Ketanji Brown Jackson represented the culmination of a sad trajectory. Nominations and hearings have always had a political component; after all, the Framers assigned the confirmation power to a political branch.

But never has a confirmation hearing been less about law and more about partisan point-scoring and presidential campaign-launching.

The 1987 confirmation hearings for Robert H. Bork kicked off the modern judicial wars, and Republicans still seethe over Bork as Democrats’ original sin. “We started down this road of character assassination in the 1980s with Judge Bork’s hearings and senators have been engaged in disgusting theatrics ever since,” said Sen. Ben Sasse (R-Neb.).

I was there, and what actually happened was, to borrow Bork’s famous description of why he wanted to be a justice, an “intellectual feast” — especially in comparison with this past week’s food fight. He was defeated by a vote of 58 to 42, including six Republican senators opposed. (Two Democrats voted to confirm him.)

That wasn’t because Democrats dragged him “into the gutter,” as Sen. Ted Cruz (R-Tex.) complained. Bork defeated Bork all by himself, thanks to his earlier, incendiary writings and then his testimony before the committee. His expressed views were so extreme and so far outside the legal mainstream that his confirmation failed by the largest margin in history.

“No, your view of the law is at sharp variance with more than a century of Supreme Court decisions which have applied equal protection to women, aliens, illegitimates, indigents and others,” said Sen. Arlen Specter (R-Pa.), announcing his vote.

Contrast this with the case, such as it is, against Jackson. There were interludes of substance involving her judicial philosophy and methodology for deciding cases, her understanding of the substantive due process cases that led to rulings supporting abortion rights and same-sex marriage, even a case or two on which she had ruled.

But with minds made up, substantive probing mostly gave way to posturing.

“On a scale of 1 to 10, how faithful would you say you are in terms of your judicial religion?” asked Sen. Lindsey O. Graham (R-S.C.)

“Can you provide a definition for the word ‘woman’?” asked Sen. Marsha Blackburn (R-Tenn.) And, “do you believe child predators are misunderstood?”

Quoting from Jackson’s college thesis, Blackburn asked, “What personal hidden agendas do you harbor or do you think other judges harbor?”

Sen. Tom Cotton (R-Ark.), seeking to turn Jackson’s defense of accused terrorists against her: “First off, let me just ask, do you think most detainees at Guantánamo Bay were mostly terrorists or mostly, I don’t know, innocent goat farmers?” And: “Okay, do you think America would be safer or less safe if we released all the detainees at Guantánamo Bay?”

Sen. John Cornyn (R-Tex.) on that subject: “Why in the world would you call Secretary of Defense Rumsfeld and George W. Bush war criminals in a legal filing?”

Answer: Jackson didn’t. A habeas corpus petition that she filed alleged the government had engaged in “torture and other inhumane treatment” that “constitute war crimes.”

Legal rules effectively required that Rumsfeld and Bush be named; after the administration changed, Barack Obama was substituted as a defendant.

Not that this deterred Republicans trying to make it look as though Jackson had smeared the former president. “Judge, official capacity, personal capacity, all of that is just a bunch of procedural gobbledygook,” observed Cotton, Harvard Law School
2002. “It sounds like a debate about how many terrorists can dance on the head of a pin to me.”

None of this — none — was designed to elicit useful information from Jackson. Its goal was to rough her up and underscore GOP talking points.

Hence the microscopic — and out-of-context — focus on what Jackson called “this small subset of my sentences,” in child pornography cases, as if a Justice Jackson would somehow use her power to unleash child predators on the country.

Hence the Cruzian performance art, complete with prop books, about, of all things, the curriculum at Georgetown Day School, which Jackson’s daughters attended and where she sits on the board.

Cruz, holding up a copy of Ibram X. Kendi’s “Antiracist Baby”: “Now this is a book that is taught at Georgetown Day School to students in pre-K through second grade, so 4 through 7 years old. Do you agree with this book that is being taught with kids that babies are racist?”

What does this possibly have to do with Jackson’s suitability to serve on the high court? To ask that question is to miss the larger point: That is no longer what this exercise is about. ■
The eloquent moment that cut through the GOP’s ugliness in the Jackson hearings

The confirmation hearings for Supreme Court nominee Judge Ketanji Brown Jackson have been rife with racism, sexism, feigned outrage and general ugliness. But Wednesday’s proceedings brought one moment of such powerful eloquence that it brought Jackson, and me, to tears. Thank you, Sen. Cory Booker (D-N.J.), for speaking truth and for celebrating this historic moment as it deserves to be marked.

Booker’s turn to question Jackson came toward the end of the session. She had been badgered all day by Republicans who pretended to be outraged by the sentences she imposed in several child pornography cases when she was a U.S. district court judge. Republican Sens. Lindsey O. Graham (S.C.) and Ted Cruz (Tex.) had been particularly obnoxious, interrupting
Jackson repeatedly and trying their best not to let her defend herself.

Booker greeted Jackson with a broad smile. “Your family and you speak to service, service, service,” he began. “And I’m telling you right now, I’m not letting anybody in the Senate steal my joy. … I just look at you, and I start getting full of emotion.”

The senator said he had been jogging that morning when an African American woman, a stranger, “practically tackled” him to explain how much it meant to her to see Jackson sitting in the witness chair.

“And you did not get there because of some left-wing agenda,” Booker said. “You didn’t get here because of some ‘dark money’ groups. You got here how every Black woman in America who’s gotten anywhere has done. By being, like Ginger Rogers said, ‘I did everything Fred Astaire did, but backwards, in heels.’ And so I’m just sitting here saying nobody’s stealing my joy. Nobody is going to make me angry.”

Booker recalled that during a meeting at the White House when President Biden was trying to decide whom to nominate, he and Vice President Harris exchanged the same “knowing glance” that they used to share when Harris was a senator and she sat next to Booker at Judiciary Committee hearings.

It is a glance that every successful African American is familiar with. It says: I know what you went through to get here. I know the hoops you had to jump through, the hurdles you had to surmount, the obstacles thrown into your path. I know you saw less talented White colleagues rise smoothly and steadily to the top while you had to prove your excellence time and again. I know that you could never let your bosses and colleagues see you get angry, never let them see you sweat.

Booker told Jackson that he knew she was “so much more than your race and gender” but could not look at her without seeing his mother or his cousins, “one of them who had to come here to sit behind you … to have your back.” He told Jackson that when he looked at her “I see my ancestors and yours. … Nobody’s going to steal that joy.”

The senator noted that Jackson’s parents, despite the oppressive racial discrimination of their times, “didn’t stop loving this country, even though this country didn’t love them back.” He quoted from the Langston Hughes poem, “Let America Be America Again.” He spoke of the struggles of Irish and Chinese immigrants and members of the LGBTQ community, who also loved this country and had to demand that it love them in return. He recounted the life story of Harriet Tubman and told of how she looked up at the North Star as a harbinger of hope. “Today you’re my star,” he told Jackson. “You are my harbinger of hope.”

The attacks from Republicans would continue, Booker said. “But don’t worry, my sister. Don’t worry. God has got you. And how do I know that?” Booker’s voice cracked with emotion. “Because you’re here. And I know what it’s taken for you to sit in that seat.”

Eugene Robinson writes a twice-a-week column on politics and culture and hosts a weekly online chat with readers. In a three-decade career at The Washington Post, Robinson has been city hall reporter, city editor, foreign correspondent in Buenos Aires and London, foreign editor, and assistant managing editor in charge of the paper’s Style section.
A Study in Contrasts

Editorials represent the views of The Washington Post as an institution, as determined through debate among members of the Editorial Board. Members comment on international, national and local issues and events. Topics range from tougher sanctions to Madeleine Albright’s enduring legacy to cost of prison phone calls to a better approach to high school bans. Their point of view is clearly stated in the two to three daily editorials. As with all well-written editorials, readers are not guessing what stand the editorial board is taking.

In addition opinion is expressed in columns, guest commentary and editorial cartoons. Before, during and after the confirmation hearings of Judge Ketanji Brown Jackson many were published in print and online.

We begin with an editorial and a column published before the confirmation hearings began and columns written when the four-day hearings had ended. Read the editorial and a column of your choice. Respond to the following questions.

1. Before reading the editorial, “An opportunity to enlighten,” review the definitions of these terms:
   - Arbiter
   - Assail
   - Contentious
   - Egregious
   - Elucidate
   - Enlighten
   - Grandstanding
   - Ideological
   - Litmus test
   - Politicization
   - Relevant
   - Stare decisis

2. The first paragraph of the editorial puts the confirmation hearing into context.
   a. What is the historic context?
   b. What is the context for some GOP senators?

3. What does the second paragraph beginning with “Even so” indicate?

4. The editorial board suggests that instead of “grandstanding” some Republican members of the Senate Judiciary Committee would do better to do what?

5. The editorial suggests the first question to ask. What is the question and why does the board believe this is an important question?

6. What is the significance of stare decisis in Supreme Court decision making in cases it agrees to hear? Give an example of a precedent that must be considered and may influence the direction the justices take?

7. The fifth paragraph of the editorial focuses on issues about court structure and rules. Name two examples that are given. What does The Post’s editorial board suggest? What do you think about both?

8. What is the role of a public defender? Why is the public defender an essential part of the American legal system?

9. What do you think the editorial board means by the hearings being “an opportunity for enlightenment”?

10. Put The Post’s editorial theme into your own words. Then state why you agree, disagree or partially agree with this theme?
Select a column about the confirmation hearing to read and discuss. Remember that columns are written by individuals who have established an expertise in certain areas through their study and experience. They have a “voice” that reflects their knowledge and style. Like the editorial board, they select their topics. Articles in the news pages sometimes prompt ideas for topics, but columnists and editorial writers do original reporting.

You may select one of the following or choose another columnist.
• “Questions for Judge Ketanji Brown Jackson” by George Will
  https://www.washingtonpost.com/opinions/2022/03/20/confirmation-questions-jackson-george-will/?itid=cn
• “Forget advise and consent. This is smear and degrade” by Ruth Marcus
• “The verdict on KBJ’s nomination hearings: Never again” by Charles Lane
• “The eloquent moment that cut through the GOP’s ugliness in the Jackson hearings” by Eugene Robinson
• “GOP grandstanders aren’t the only reason Jackson’s confirmation hearings were so disgraceful” by Jennifer Rubin

11. What is the main idea presented in the column?

12. In what manner did the columnist develop his or her argument to persuade readers? Through history, examples, concepts, comparison and contrast, definition, or another device?

13. Are any of the ideas or arguments similar to those presented in The Post’s editorial? If yes, give an example. If no, explain how they differ in looking at the confirmation hearings.

14. Did the columnist make you think about an aspect of the confirmation process? In a new way or in support of what you thought?

15. What is your point of view about the nomination and confirmation process? Put into your own words a stand you would take in a column or debate
Visual Commentary | Judge Jackson Hearing

These four editorial cartoons comment on the process of nominating and confirming a justice to the Supreme Court. The process was established in Article III of the Constitution — “Judicial Power of the United States, shall be vested in one supreme Court” and in Article II, Section 2, clause 2: the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint … Judges of the supreme Court.” Ever since editorials and editorial cartoons have commented on the choices and hearings.

Visual Commentary

January 26, 2022  With Breyer’s Retirement

January 27, 2022  Not Another Woman on the Supreme Court!

February 27, 2022  A Case For History?

March 26, 2022  What Else Is New?
Visual Commentary | continued

January 26, 2022

1. The entire title of Telnaes’s commentary is “With Breyer’s Retirement, a new nominating process begins.” Why do you think Telnaes uses the adjective “new”?

2. Who are the two figures in her cartoon? What do the postures of the two men express? What do the dark glasses and the dialogue of one of them convey?

3. What role has Sen. Mitch McConnell (R-Ky.) played in confirming nominees to the Supreme Court? What do you think is the appropriate role of members of the Senate Judiciary Committee during confirmation hearings?

January 27, 2022

1. On January 25 President Biden announced his nominee for the vacant Supreme Court seat. What campaign pledge was he fulfilling?

2. Ann Telnaes labels the setting. What is the connotation of a “Good Old Boys Club”?

3. The dialogue between two club members is revealing and ironic. Explain their attitudes toward the nominee and the irony of their comments.

February 27, 2022

1. Who are the two figures in de Adder’s editorial cartoon? What details help to identify them?

2. The rhetorical device of contrast is used in visual commentary. To be sure readers know his intended comparison, de Adder has labeled items and added a question. Summarize the backgrounds of both individuals and explain the contrasts.

3. Do you think media treated the nominees differently? What does “beer” represent? How did it add a new element to his confirmation process?

March 26, 2022

1. What details help to define the current event on which Bell is commenting?

2. The five figures at the top of the image have name plates. Do they represent actual senators or attitudes collectively expressed by senators of one party? Explain your response.

3. Rather than name the honorable judge, her name plate reads “What Else Is New?” Does this refer to this specific nominee, female judicial nominees or to another issue? What is Bell’s point of view?
The First Five

“It’s wonderful to be the first to do something but I didn’t want to be the last.”

— Sandra Day O’Connor

When Ronald Reagan was a presidential candidate he stated he would nominate a woman to the Supreme Court. Former Vice President Joe Biden made a similar campaign pledge and added he would nominate a Black woman.

Women have been appointed to lower courts, but not until Sandra Day O’Connor was nominated was a female appointment seriously considered. Judge Ketanji Brown Jackson is the sixth female justice, and only Black woman, to be nominated to sit on the Supreme Court.

The first five women to serve as associate justices of the Supreme Court:
Sandra Day O’Connor
Ruth Bader Ginsburg
Sonya Sotomayor
Elena Kagan
Amy Coney Barrett

1. For each of the five first female associate justices on the Supreme Court find the following information:
   President who nominated her and year nominated
   A brief bio of her personal life, including education
   Her age and professional and judicial career when nominated
   What the president who nominated her said about her
   Key cases when in the majority
   Key cases when in the minority

2. Do you think having a diverse Supreme Court matters? Explain your response.

“The power I exert on the court depends on the power of my arguments, not on my gender.”

— Sandra Day O’ Connor