

SUPREME COURT NOMINATIONS

Barely 30 years ago, liberal jurist Ruth Bader Ginsburg was confirmed to the Supreme Court by a Senate vote of 96-3.

It's impossible to imagine President Biden's nominee for the current Court opening getting a similar vote share today.

But why? This No Labels View delves into how and why our Supreme Court nominations have been consumed by the partisan tribalism that consumes almost everything else in our politics.

Senators once believed their constitutional "advise and consent" for Supreme Court nominations meant ensuring that a nominee was professionally qualified and free of any serious ethical concerns. Senators did not expect a nominee to agree with their personal politics, and presidents were given broad latitude to nominate justices who agreed with their judicial philosophy.

But as Congress has become more dysfunctional — and less able to pass legislation to solve our problems and settle tough debates — the court system has become the arbiter of last resort. For partisans on both sides, a Supreme Court nomination is now the ultimate battle for every issue they care about and everything they believe in.

Supreme Court justices are also serving longer than ever before, with Supreme Court justices confirmed today likely to still be on the bench well into the middle of the 21st century.

Here are five key insights showing just how partisan Supreme Court nominations have become, and what it is doing to the public's faith in our judiciary.

INSIGHT: Until the George W. Bush Administration, nominees for the Supreme Court were usually approved by wide bipartisan margins, with senators of both parties putting the nominee's qualifications ahead of ideological considerations.

Stevens (1975)	98-0
O'Connor (1981)	99-0
Rehnquist (chief justice 1986)	65-33
Scalia (1986)	98-0
Bork (1987)	42-58
Kennedy (1987)	97-0
Souter (1990)	90-9
Thomas (1991)	52-48
Ginsburg (1993)	96-3
Breyer (1994)	87-9
Roberts (chief justice 2005)	78-22
Alito (2005)	58-42
Sotomayor (2009)	68-31
Kagan (2010)	63-37
Gorsuch (2017)	54-45
Kavanaugh (2018)	50-48
Barrett (2020)	52-48

** This was not true in the case of Robert H. Bork, nominated by President Reagan in 1987. Bork's critics generally conceded that he was qualified, but objected to him on ideological grounds. Then-Senate Judiciary Chairman Joe Biden used his opposition to Bork as the driving point of his campaign for the 1988 Democratic presidential nomination. The nomination of Clarence Thomas by President George H.W. Bush four years later largely revolved around questions of the nominee's qualifications and allegations against him.*

INSIGHT: Many of the most conservative senators voted for the most liberal Supreme Court nominees, and vice versa.

Antonin Scalia was the key conservative on the court during his tenure, while Ruth Bader Ginsburg was the key liberal. Their nominations came just seven years apart, and there were 62 senators serving at the time of Scalia's nomination who were still in the Senate for the Ginsburg nomination.

Among the senators who voted for both Scalia and Ginsburg:

- Sen. Joe Biden (D-DE)
- Sen. Robert Byrd (D-WV)
- Sen. Robert Dole (R-KS)
- Sen. John Glenn (D-OH)
- Sen. Phil Gramm (R-TX)
- Sen. Chuck Grassley (R-IA)
- Sen. Orrin Hatch (R-UT)
- Sen. Ted Kennedy (D-MA)
- Sen. John Kerry (D-MA)
- Sen. Patrick Leahy (D-VT)
- Sen. Mitch McConnell (R-KY)
- Sen. Strom Thurmond (R-SC)

INSIGHT: Since 2005, outside interest group spending on Supreme Court nominations, both for and against, has climbed steadily.

	Spending*	Days Between Nomination and Vote	Vote
Roberts (2005)	\$1.5 million	39	78-22
Miers (2005)	\$350,000	Withdrawn after 24 days	N/A
Alito (2005)	\$2.2 million	82	58-42
Sotomayor (2009)	\$1 million	66	68-31
Kagan (2010)	\$1million	87	63-37
Garland (2016)	\$7 million	Expired after 293 days	N/A
Gorsuch (2017)	\$13 million	65	54-45
Kavanaugh (2018)	\$26 million	88	50-48
Barrett (2020)	\$40 million	27	52-48

** Exact numbers are not available since spending laws have changed and many of the organizations did not disclose their full investment in any campaign. These totals are the minimum total; in some cases, the actual totals may have been higher.*

INSIGHT: The most recent Supreme Court nominations have brought millions of dollars in advertising spending from groups supporting or opposing nominees.

Group	Nominee	Stance	Amount
Demand Justice (Sixteen Thirty Fund)	Barrett	Anti	\$10,000,000
Judicial Crisis Network	Barrett	Pro	\$10,000,000
Judicial Crisis Network	Kavanaugh	Pro	\$10,000,000
Judicial Crisis Network	Gorsuch	Pro	\$10,000,000
Judicial Crisis Network	Garland	Anti	\$7,000,000
America First Policies	Barrett	Pro	\$5,000,000
Club for Growth	Barrett	Pro	\$5,000,000
Demand Justice (Sixteen Thirty Fund)	Kavanaugh	Anti	\$5,000,000
Great America Alliance	Kavanaugh	Pro	\$4,500,000
Heritage Action	Barrett	Pro	\$3,500,000
CatholicVote.org	Barrett	Pro	\$2,500,000
Turning Point USA	Barrett	Pro	\$2,300,000
National Rifle Association	Kavanaugh	Pro	\$1,250,000
American Civil Liberties Union	Kavanaugh	Anti	\$1,200,000
Americans for Prosperity	Barrett	Pro	\$1,000,000
National Rifle Association	Gorsuch	Pro	\$1,000,000

INSIGHT: As the polarization around Supreme Court nominations has gone up, public approval of the Court's performance has declined.

	Approve	Disapprove
2000	62%	29%
2005	56%	36%
2010	51%	39%
2015	49%	46%
2020	53%	43%
2021	40%	53%

Source: Gallup