

New High Court Nominee: Ketanji Brown Jackson

What is the Supreme Court?

- The Supreme Court is part of the judicial branch of the government, and it is the highest court of the land. It is regarded as the “final arbiter of the law.”
- The Supreme Court’s powers are outlined in Article III of the Constitution.
- The Supreme Court helps maintain checks and balances in government, limiting the power of the other two other branches of the government (executive and legislative).
- It also protects civil rights and liberties by striking down laws that violate the Constitution. Recent cases have examined issues related to [Medicare](#), [voter-ID laws](#), [Covid-19 vaccination mandates](#), [abortion](#), and [immigration](#).
- There are nine Justices of the Supreme Court: one chief justice and eight associate justices.
- Justices are appointed by the president and are confirmed by the Senate. Typically, they hold office for life.

Source: <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/about>

Reading and Discussion:

Judge Ketanji Brown Jackson

On Friday, February 25, 2022, President Joe Biden nominated federal appeals court judge Ketanji Brown Jackson to become the 116th associate justice of the United States Supreme Court. The nomination came one month after Associate Justice Stephen Breyer announced his plans to retire during the court’s summer recess later this year.

If confirmed, Jackson will be the first African-American woman in U.S. history to serve on the Supreme Court. Biden had stated his commitment to selecting a Black woman for the highest court in the nation during his 2020 campaign for president, so Jackson’s nomination represents the fulfillment of this campaign promise.

Before making his selection, President Biden studied the case records and biographical information of all of his potential nominees. He also consulted with legal experts and asked for advice from senators from both the Democratic and Republican parties. [According to the White House](#), the criteria the President used to arrive at his final selection included “exceptional credentials, unimpeachable character...a deep understanding of the Constitution...[and a commitment to] equal justice under the law.” For President Biden, Ketanji Brown Jackson met all of these criteria.

Ketanji Brown Jackson is an experienced judge who has presided over both the U.S. Court of Appeals for the D.C. Circuit and the U.S. District Court for the District of Columbia. For both of these federal court

roles, she was nominated by the President and confirmed with bipartisan support. As a judge, some of her most notable rulings addressed Congress's ability to investigate the executive branch, and the removal of non-citizens without appearing before a judge.

Jackson also served as the vice chair of the U.S. Sentencing Commission (which focuses on ensuring that federal sentences are proportionate to the crimes committed) and as a law clerk under Justice Breyer—whom she will potentially replace. Unlike most other Supreme Court justices, if confirmed, Jackson would be the only one on the bench who would have experience serving as a public defender (a lawyer who represents people who otherwise wouldn't be able to afford to hire a lawyer to defend themselves in a trial).

A Brief Bio of Judge Jackson

Judge Jackson was born in Washington, DC and grew up in Miami, Florida. Her parents attended segregated primary schools, then attended historically Black colleges and universities. Both started their careers as public school teachers and became leaders and administrators in the Miami-Dade Public School System. When Judge Jackson was in preschool, her father attended law school. In a 2017 lecture, Judge Jackson traced her love of the law back to sitting next to her father in their apartment as he tackled his law school homework—reading cases and preparing for Socratic questioning—while she undertook her preschool homework—coloring books.

Judge Jackson stood out as a high achiever throughout her childhood. She was a speech and debate star who was elected “mayor” of Palmetto Junior High and student body president of Miami Palmetto Senior High School. But like many Black women, Judge Jackson still faced naysayers. When Judge Jackson told her high school guidance counselor she wanted to attend Harvard, the guidance counselor warned that Judge Jackson should not set her “sights so high.”

That did not stop Judge Jackson. She graduated magna cum laude from Harvard University, then attended Harvard Law School, where she graduated cum laude and was an editor of the Harvard Law Review.

Judge Jackson lives with her husband, Patrick, and their two daughters, in Washington, DC.

Source: <https://www.whitehouse.gov/kbj/>

Discussion

1. Based on what you have read, what adjectives might you use to describe Judge Jackson? Why?
2. What aspect of Judge Jackson's biographical information resonated with you the most?
3. What elements of Judge Jackson's story might cause someone to view her as a role model?

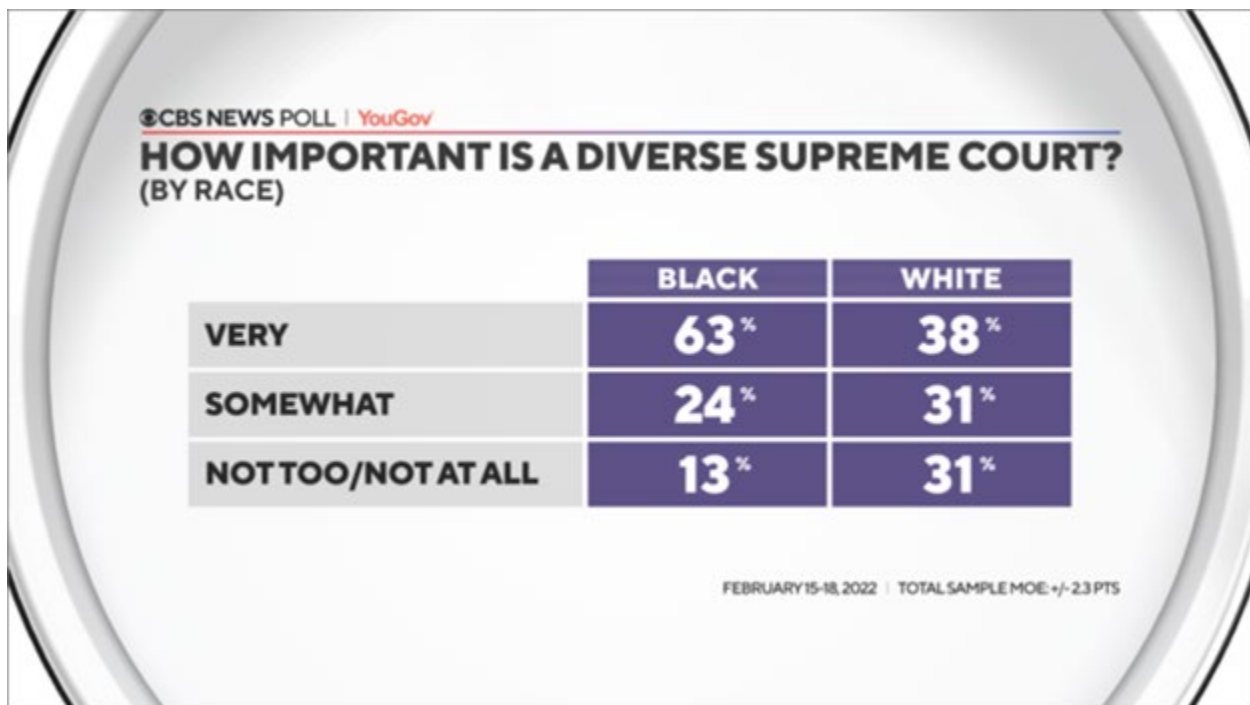
What Impact Would More Diversity Have on the Supreme Court?

If confirmed, Judge Ketanji Brown Jackson would be the first African-American woman to serve on the bench of the United States Supreme Court. Of the 115 current and former Supreme Court Justices, [108 of them have been white men](#). Jackson's nomination has cast a light on an issue that many citizens have been raising for quite some time: Our nation's highest court, whose decisions have a tremendous impact on society at large, is not representative of America's diverse population.

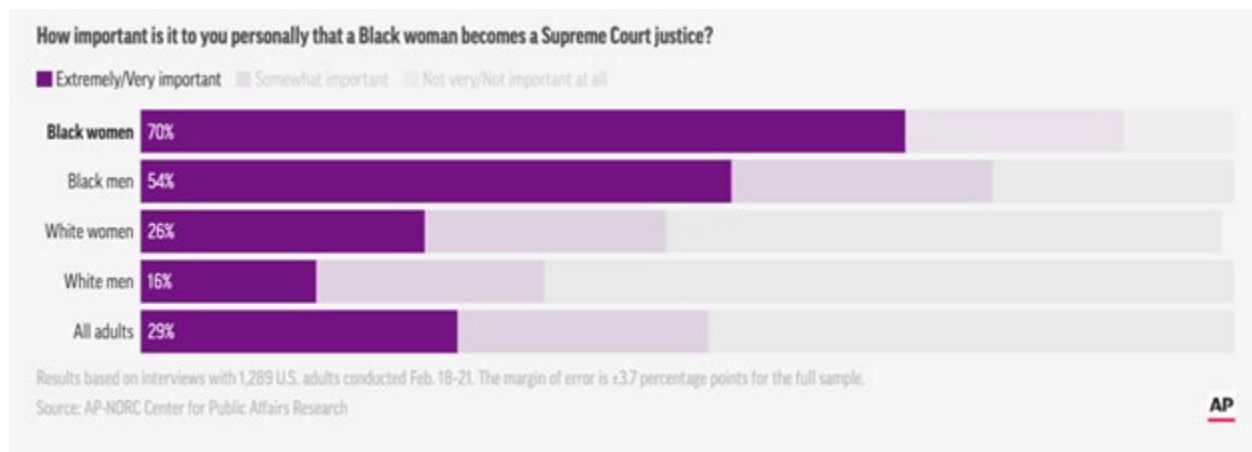
For many individuals who share a racial/gender identity with the current justices, the lack of diversity is not perceived as much of an issue. However, for a majority of the people who do not see themselves reflected in the Supreme Court's membership, the lack of diversity is a significant concern.

As Senate Majority Leader Chuck Schumer remarked, "When Americans come before the courts and look up at those who preside in the courtroom, they should trust that those who render judgment on them will be able to understand each litigant's lived experience and bring a modicum of human understanding required to apply the law equitably. The best way we can do that is to elevate judges from a broad range of backgrounds."

Evaluating Data



Source: <https://www.cbsnews.com/news/Black-representation-corporate-america-opinion-poll-2022-02-24/>



Source: <https://apnews.com/article/stephen-breyer-joe-biden-us-supreme-court-race-and-ethnicity-64bca7bacab91cf4c3055ed908ab6c70>

Discussion

1. Based on the data, for which demographics was the selection of a Black woman for the Supreme Court (1) the most important and (2) the least important?
2. What hypothesis can you develop to explain why certain demographics felt more strongly about this issue than others?

What Research Shows About the Importance of Supreme Court Diversity

Consider the information below from the [Brennan Center for Justice](https://www.brennancenter.org/our-work/analysis-opinion/what-research-shows-about-importance-supreme-court-diversity).

- A diverse judiciary helps instill trust in the justice system among underrepresented communities
- A bench that reflects a broad range of life experiences and personal and professional backgrounds also promotes a richer jurisprudence.
- Research similarly has shown that “judges from different backgrounds often do rule differently from one another” on certain issues.
- Diversity of life experience and perspectives also enriches deliberations among judges.
- Representation in our seats of power also establishes role models and combats stereotypes.

To be sure, none of this research suggests that a judge’s background is determinative in how they decide cases. And diversity is not a guarantee that courts will reach fair outcomes. But the answers to difficult legal questions, especially those that reach the Supreme Court, demand good judgment — and that is necessarily informed by life experience.

Source: <https://www.brennancenter.org/our-work/analysis-opinion/what-research-shows-about-importance-supreme-court-diversity>

Discussion

How would you evaluate the Brennan Center statement as a piece of persuasive writing?

1. Are there any additional points you would add to this list?
2. If you were to arrange the points above in order of most importance, how would you rank each of the points made? Explain your reasoning.
3. When combined, do the reasons listed above present a convincing enough argument in favor of Supreme Court diversity?
4. What counterpoints, if any, might someone present in response to this list?

Should Race/Gender Be a Factor in Selecting a Supreme Court Justice?

President Biden's decision to nominate a Black woman to the Supreme Court was met with both praise and a fair amount of criticism.

Supporters celebrate the decision, as it represents a step towards correcting the historical exclusion of Black women from positions of power in our government. Historian [Thomas Zimmer](#) writes in the Guardian:

Biden's announcement...symbolizes the recognition that having white men dominate the powerful institutions of American life is a problem – and that rectifying this imbalance is an urgent task...due to political, cultural, and demographic changes, the country has indeed become less white, less conservative, less Christian. The balance of political power doesn't (yet) reflect that, as the U.S. system has many undemocratic distortions and is deliberately set up in a way that disconnects these changing demographic and cultural realities from political power.

Critics have argued that President Biden's insistence on nominating a Black woman to the Supreme Court unfairly eliminated countless potential candidates who were otherwise qualified (or perhaps even more qualified) for the position. Some critics went so far as to say the approach was essentially a form of [affirmative action](#).

Others were supportive of President Biden's decision, but critical of the way he communicated his desire to place a Black woman on the Supreme Court bench. They argue that by broadcasting that he would only consider African-American women for the role, the President made his nominee the subject of unnecessary scrutiny. Writes Andrew C. McCarthy at the National Review:

All that said, it is regrettable that Biden made such an issue of Judge Jackson's race and sex. There is no longer anything unusual in our country about Black women being elected or appointed to powerful government posts. Biden did the process and Judge Jackson no favors by the way he went about this. Indeed, it was incompetent: All he needed to do, since the decision was all his, was first say he was going to pick the best nominee he could find, and then pick Jackson or one of the other highly accomplished Black women who were under consideration. Instead...he elevated immutable characteristics over impressive achievements, leaving his nominee vulnerable to the criticism that she may not have been the best candidate available.

A Fox News poll conducted in February 2022 asked people their opinion of “President Biden nominating an African American woman to SCOTUS” (the Supreme Court of the United States). 63% of respondents said they were in favor, while 28% said they were opposed.

However, when Fox News asked their opinion about “Biden only considering African American women to fill the first open SCOTUS seat,” 38% of percent of respondents said that would be appropriate and 57% said it would be inappropriate.

Discussion

1. How would you respond to each of the two questions in the poll?
2. Were you surprised by any of the data?
3. What inference can you make about the difference in responses between these two poll questions?

Elected Officials React to Judge Jackson’s Nomination

Read the quotations below and respond to the questions that follow.

PRESIDENT JOE BIDEN: “For too long, our government, our courts, haven’t looked like America. 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.”

SENATE MAJORITY LEADER CHUCK SCHUMER, D-NY: “With her exceptional qualifications and a record of evenhandedness, Judge Ketanji Brown Jackson will be a justice who will uphold the Constitution and protect the rights of all Americans, including the voiceless and the vulnerable. She’s a true public servant and a model jurist.”

SENATE JUDICIARY COMMITTEE CHAIRMAN DICK DURBIN, D-IL: “To be the first to make history in our nation you need to have an exceptional life story. Judge Jackson’s achievements are well known to the Senate Judiciary Committee as we approved her to the D.C. Circuit less than a year ago with bipartisan support. We will begin immediately to move forward on her nomination with the careful, fair, and professional approach she and America are entitled to.”

SENATE REPUBLICAN LEADER MITCH MCCONNELL, R-KY: “The Senate must conduct a rigorous, exhaustive review of Judge Jackson’s nomination as befits a lifetime appointment to our highest court. This is especially crucial as American families face major crises that connect directly to our legal system, such as skyrocketing violent crime and open borders.”

IOWA SEN. CHUCK GRASSLEY, the top Republican on the Senate Judiciary panel: “Our review will be as fair and respectful as it is complete and comprehensive. That is what this process demands and what the American people expect ... I look forward to meeting with Judge Jackson face to face on Capitol Hill in the coming days.”

FORMER PRESIDENT BARACK OBAMA: “Judge Jackson has already inspired young Black women like my daughters to set their sights higher, and her confirmation will help them believe they can be anything they want to be.”

WEST VIRGINIA SEN. JOE MANCHIN, a moderate Democrat: “Just as I have done with previous Supreme Court nominees, I will evaluate Judge Jackson’s record, legal qualifications, and judicial philosophy to serve on the highest court in the land. I look forward to meeting with Judge Jackson before determining whether to provide my consent.”

MAINE SEN. SUSAN COLLINS, a moderate Republican who voted to confirm Jackson to the appeals court last year: “Ketanji Brown Jackson is an experienced federal judge with impressive academic and legal credentials. I will conduct a thorough vetting of Judge Jackson’s nomination and look forward to her public hearing before the Senate Judiciary Committee and to meeting with her in my office.”

ALASKA SEN. LISA MURKOWSKI, a Republican who also voted to confirm Jackson to the appeals court: “I’ve been clear that previously voting to confirm an individual to a lower court does not signal how I will vote for a Supreme Court justice. I am committed to doing my due diligence before making a final decision on this nominee. Being confirmed to the Supreme Court — the nation’s highest tribunal, and a lifetime appointment — is an incredibly high bar to achieve.”

MISSOURI SEN. JOSH HAWLEY, a GOP member of the Judiciary panel.: “When Judge Jackson appeared last year before the Judiciary Committee, I was troubled by aspects of her record, including her record on crime and criminal justice. I will be thoroughly reviewing Judge Jackson’s record from top to bottom and look forward to speaking with her.”

TENNESSEE SEN. MARSHA BLACKBURN, also a Republican member of the Judiciary committee: ““President Biden’s announcement just days after an unprovoked full scale invasion by Russia is extremely inappropriate ... However, I cannot hold President Biden’s failure to lead our nation against his nominee. I do plan on meeting with the President’s nominee in person, and thoroughly vetting her record to determine if she is a person of high character.”

SEN. CORY BOOKER, D-N.J.: “This is a Jackie Robinson moment for our nation ... I’m profoundly moved by this; my heart aches with joy.”

SOUTH CAROLINA REP. JIM CLYBURN, who pushed Biden to nominate a Black woman during the 2020 campaign and later pushed for another candidate, Judge J. Michelle Childs: “This is a glass ceiling that took far too long to shatter, and I commend President Biden for taking a sledgehammer to it. I congratulate Judge Jackson and offer my full support during the confirmation process and beyond.”

Source: <https://apnews.com/article/ketanji-brown-jackson-j-michelle-childs-joe-biden-us-supreme-court-race-and-ethnicity-8baa796d3a096fde9e77cb79f2945c54>

Discussion

1. What are some of the most common sentiments expressed in these quotations?
2. Which quotation makes you feel the most confident in Ketanji Brown Jackson’s ability to serve on the Supreme Court? Which makes you feel the least confident about her candidacy?
3. What patterns, if any, did you observe in the ways that Democrats and/or Republicans responded to her nomination?
4. What if any observation or point of view do you think was not represented in the quotes above, and should have been?