

Republicans muted in fight against Supreme Court nominee. Here's why.

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Former President Donald Trump spent an hour channeling the mood of conservative voters last week when, during a free-wheeling rally in South Carolina, he riffed on favorite subjects ranging from Ukraine to Mark Zuckerberg.

Entirely absent during his hour-long appearance? Any mention of would-be Supreme Court Justice Ketanji Brown Jackson.

He's not the only Republican whose attention is elsewhere right now.

Less than a week before Jackson is set to begin confirmation hearings for the Supreme Court, the Republican Party and broader conservative movement are signaling they're not interested in a knock-down, drag-out fight over the nomination. Most Republicans have avoided sustained personal attacks, TV ad campaigns have run dry, and even leading Republican media figures — on Fox News and other outlets — have largely focused on other topics.

Their lack of focus has transformed what many once expected to be a marquee ideological fight over the Miami-raised judge into a relatively subdued process, at least thus far. And even Republicans acknowledge that's indicative of the fact that Jackson, the first Black woman nominated to serve on the Supreme Court, is likely to win confirmation.

“Every battle you get into you have to measure the cost of the battle and what is to be gained by the battle,” said former Republican Sen. Rick Santorum of Pennsylvania. “And I don't think there's much to be gained by engaging in a full-scale assault on this nominee.”

GOP officials like Santorum caution that even if Jackson is likely to be confirmed by the Senate, she'll do so with at most a couple of Republican votes. They warn that her confirmation hearings will still be contentious, as GOP lawmakers zero in on what many of them consider her overly liberal judicial philosophy. And one member of the Senate Judiciary Committee, Sen. Josh Hawley, R-Mo., indicated Wednesday that he was ready to criticize Jackson in more severe terms, accusing her of taking a soft approach on sex offenders.

But compared to the recent marquee ideological showdowns of other Supreme Court confirmations, including those of recently appointed Justices Brett Kavanaugh and Amy Coney Barrett, the fight over Jackson has thus far been conspicuously dormant.

“It’s pretty clear that the Republican establishment has not swung into action in any sort of genuine effort to block this nomination, or even raise serious questions about Judge Jackson,” said Clark Neily, senior vice president for legal studies at the libertarian Cato Institute.

President Joe Biden nominated Jackson in February to replace retiring Justice Stephen Breyer. Just a year earlier, Biden had nominated Jackson to sit on the U.S. Court of Appeals for the District of Columbia, where she won confirmation in the Senate with every Democratic vote and the support of three Republicans: Sens. Lindsey Graham of South Carolina, Susan Collins of Maine, and Lisa Murkowski of Alaska

White House officials point to endorsements Jackson has received, including from the International Association of Chiefs of Police and Thomas Griffith, a former circuit court judge appointed by George W. Bush, as proof of the strength of her nomination.

“She is deeply qualified for the Supreme Court — as Senator McConnell affirmed after meeting with her — and her record and approach to cases is defined by respect for our Constitution and non-ideological neutrality,” said Andrew Bates, White House spokesman.

Senate Republicans have grumbled about her confirmation’s quick timeline and scrutinized Jackson’s past decisions.

But there’s little indication that they’re heading into next week’s hearings with a plan to employ scorched earth tactics to scuttle the nomination.

Sen. Ted Cruz, R-Texas, one of the Senate’s foremost firebrands, said this week that viewers shouldn’t expect the same level of contention that took place in 2018 with the hearings on Kavanaugh’s nomination when Democrats on the committee probed into allegations of sexual misconduct.

“I am confident we will thoroughly consider every aspect of our record. What we will not be doing is repeating the spectacle of character assassination,” Cruz, a member of the Senate Judiciary Committee, told McClatchy.

But a focus on Jackson’s record doesn’t guarantee civility or a lack of controversy. Hawley, who along with Cruz sought to overturn Biden’s Electoral College victory, accused Jackson of being overly lenient in sex offense cases.

“Judge Jackson has a pattern of letting child porn offenders off the hook for their appalling crimes, both as a judge and as a policymaker. She’s been advocating for it since law school. This goes beyond ‘soft on crime.’ I’m concerned that this a record that endangers our children,” Hawley said on Twitter.

He cited out-of-context remarks from a 2012 hearing of the U.S. Sentencing Commission in which Jackson, at the time the bipartisan commission’s vice chair, was questioning a witness from the Justice Department’s Child Exploitation and Obscenity Section on distinctions between types of offenders.

He also pointed to sentences she had given offenders as a federal district court judge that fell below the recommended federal sentencing guidelines.

It's common for judges to hand down sentences below the recommended guidelines in these cases. A 2021 report from the Sentencing Commission found that in 2019 only 30% of non-production child pornography offenders were charged within the federal guidelines. The commission said technological changes had rendered the current sentencing scheme insufficient for distinguishing between types of offenders.

“Courts increasingly apply downward variances in response to the high guideline ranges that now apply to the typical non-production child pornography offender, although sentences remain lengthy,” the report said.

Other Republicans appear more likely to use the hearings as an opportunity to reject efforts to expand or reform the court rather than attacking Jackson herself.

In a Tuesday floor speech, Senate Minority Leader Mitch McConnell, R-Ky., took aim at Demand Justice, a progressive group that advocates for court expansion and was co-founded by former Hillary Clinton campaign press secretary Brian Fallon.

McConnell's criticism was similar to a line of attack pushed by the conservative Judicial Crisis Network, which spent millions of dollars in ads in February singling out Arabella Advisors, a liberal group that helps steer money to a network of progressive organizations and causes.

Conservatives say they expect to continue pushing the line of criticism through the confirmation hearings.

“During the coming hearing and beyond, JCN will continue to do whatever is necessary to highlight the corrupting influence of Arabella Advisors' vast dark money network on the judiciary and the judicial nominations process,” said Carrie Severino, JCN's president, in a statement.

REASONS

But after its February ad blitz, JCN hasn't run an ad that references Jackson or the confirmation fight this month, according to two sources tracking TV ad spending. And officials with the group acknowledge that lockstep Democratic support for her nomination, even from moderate members like Kyrsten Sinema of Arizona and Joe Manchin of West Virginia, makes it unlikely Republicans have a chance to stop it.

Republicans and Democrats say a perfect storm of circumstances explains why Jackson's nomination has yet to galvanize resistance on the right. As Severino mentioned, many of them doubt even a fierce GOP effort would be successful.

Even when they're critical, most Republicans have carefully worded their statements about Jackson. Sen. Marco Rubio, R-Fla., said his meeting with the judge did not ease his concerns

about her nomination, but in the same statement referred to the judge's personal story as inspiring.

And both parties acknowledge that conservatives already hold a six-member majority on the nine-member court, after Republican senators successfully blocked former President Barack Obama from appointing a new justice during the last year of his presidency and Trump successfully nominated three of them: Kavanaugh, Barrett, and Neil Gorsuch. Jackson would replace a liberal in Breyer, lowering the stakes.

“There are a variety of reasons beginning with the fact that Republicans know this court has been so tilted toward the right wing, the three most recent appointees and they succeeded unconscionably in blocking Garland,” said Democratic Sen. Richard Blumenthal of Connecticut. “So that may be a factor, but she's a very superbly qualified candidate, and very charming and intellectually impressive, and so I think that's really wowed a lot of Republicans.”

Other Republicans speculate that, amid a favorable political climate, party leaders would rather continue keeping the public focus on issues like inflation, rather than their own dug-in opposition to a historic Supreme Court nominee.

And the war in Ukraine, which began the same week Biden nominated Jackson, has also commanded the vast majority of the media's attention, including among conservative networks. When Fox News host Sean Hannity interviewed Rubio on his show Monday, for instance, the topic was not the Supreme Court but Russia's invasion of the European country.

Watchers of the network say they've been somewhat surprised that, while not ignoring Jackson completely, conservative media figures have not led a sustained negative campaign against her.

“This is nowhere near the virulence and volume with which we've normally seen,” said Sergio Munoz, policy director here at the liberal group Media Matters.

The confirmation hearings are scheduled to be held from Monday to Thursday. Democratic leaders are aiming for a vote before the full Senate before Easter.

Santorum said that he hopes Republicans ask probing, difficult questions of Jackson during the hearings. But barring an unforeseen development, he's not sure the questions — or any part of Jackson's confirmation — will break through to the public.

“My guess is this is going to struggle for airtime,” he said.