



## Supreme Court confirmation hearing starts with historic mark

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The weeklong Supreme Court confirmation hearing for Judge Ketanji Brown Jackson starts Monday heavy on history and relatively light on political drama.

The 51-year-old appeals court judge would be the first Black woman on the Supreme Court, and the first justice with experience representing those too poor to afford an attorney; Democrats plan to highlight what that perspective would mean to the court.

“She would be the first Supreme Court justice who is the daughter of parents who felt the crushing oppression of segregation, and the first justice who has represented an indigent as a public defender,” Senate Judiciary Committee Chairman Richard J. Durbin, D-Ill., said Thursday on the Senate floor.

Jackson, the daughter of public school teachers in Florida, graduated from Harvard Law School, clerked on the Supreme Court, has law enforcement in her family, and has been a federal judge since 2013. She has picked up support from prominent conservative federal judges and lawyers, law enforcement groups and more.

“Indeed, with Judge Jackson’s confirmation, the Supreme Court would come closer to fully reflecting the diversity of America,” Durbin said. The country “will get to see what I have seen in meeting with her personally. She is thoughtful brilliant, kind and has a good sense of humor,” he said.

That opportunity is available: Only about one in four voters identified Jackson by name as the Supreme Court nominee in a C-SPAN/Pierrepont Survey, with another 15 percent who could report that the nominee is a Black woman judge.

Jackson will get a chance to introduce herself again. When she did so at the White House at her nomination announcement, she spoke of hope that her life and career could inspire future generations, the way she was inspired by Constance Baker Motley, the first Black female federal judge.

Republicans, with one exception, largely have passed on opportunities to attack Jackson — while Texas Republican Sen. John Cornyn and others have praised her qualifications.

Instead, Republicans have simply pointed to the opportunity at confirmation hearings to reexamine her past decisions from the bench and demand more thorough answers about her judicial philosophy.

Opening statements are Monday, and the questioning will start Tuesday. Here's what to expect.

### **'Respectful' Republicans**

Jackson's confirmation hearings will start with some political realities that leave little incentive for Republicans to escalate the fight.

Biden's selection of a Black woman has meant extra scrutiny for the way politicians and Washington insiders talk about a confirmation fight and could energize voters ahead of the midterm elections this year.

Minority Leader Mitch McConnell agreed Thursday that the Republican caucus knows that they need to avoid a misstep that could hurt their chances to retake the majority after the 2022 midterm elections — and that she is likely to be confirmed.

"I think Judge Jackson will be treated respectfully," McConnell told conservative radio host Hugh Hewitt. "I think the questions will be appropriate, and I think you're right. I think she's highly likely to be confirmed with very few Republican votes because of her philosophy, not anything else."

Jackson would be filling a vacancy created by the retirement of Justice Stephen G. Breyer, meaning her appointment would not change the conservative 6-3 ideological tilt of the Supreme Court. The nomination is overshadowed by a war in Ukraine, with Biden traveling to Europe this week.

The Democratic caucus can stick together and confirm Jackson without the help of Republicans, and none of the Senate's 48 Democrats and the two independents who caucus with them have voted against any of Biden's judicial nominees on the Senate floor.

Republican Sen. Susan Collins of Maine — who, along with Lindsey Graham of South Carolina and Lisa Murkowski of Alaska, joined Democrats to vote to confirm Jackson to the appeals court last year — sounded open to voting for Jackson again after their closed-door meeting ahead of the hearing. Graham is on the Judiciary Committee and will be questioning Jackson this week.

Clark Neily of the libertarian Cato Institute said the hearings might not be that interesting unless some new and shocking information comes to light.

"It seems to me that basically everybody who's tapped into what's going on around town recognizes that the only question will be by what margin is Judge Jackson confirmed, not

whether she will be,” Neily said during a webinar hosted by the conservative Committee for Justice.

### **Judicial philosophy**

Although Cornyn is among Republicans who have praised Jackson’s qualifications, he has said he will need to know more about Jackson’s judicial philosophy — or how she approaches her decisions and interprets the Constitution.

At her confirmation hearing a year ago for the appeals court in Washington, Jackson said she does not have a judicial philosophy per se. “Not really a philosophy, more of a methodology,” Jackson said. “It is the idea that it is only appropriate for the judge to take into account the arguments of the parties, the facts in the case and the law that applies in every case.

“And I have found that if you do that, you can be consistent in the way that you’re analyzing the issues. And you can set aside any thoughts about who is making the arguments, what advantages any side might take away from your opinions.”

Cornyn said that he will delve deeper because as a lower court judge she was bound by Supreme Court precedent, but as a justice she would be making that precedent.

“I don’t think Judge Jackson was particularly forthcoming with her answers when we asked about her philosophy,” Cornyn said on the Senate floor.

### **Expanding the court**

McConnell, after his meeting with Jackson, said she didn’t answer his questions about whether seats should be added to the Supreme Court. Democrats have introduced bills to do so, which have been championed by liberal advocacy group Demand Justice.

Republicans criticized Demand Justice at Jackson’s last confirmation hearing and are almost certain to do so again, partly to connect Jackson with those broader efforts to overhaul the Supreme Court.

Cornyn asked Jackson the question in a way that avoided that deferment to Congress: Do you think Congress should add additional seats to the Supreme Court?

“Senator, as a sitting judge I am bound by the Supreme Court, and I don’t think it’s appropriate for me to comment on the structure or the size of the court any more than it would be for me to comment on the court’s rulings,” Jackson said. “Regardless of the size, I would follow the precedents of the Supreme Court.”

White House Press Secretary Jen Psaki has said that the Constitution is clear that the number of justices is a question for Congress, not the judiciary. And Psaki pointed out earlier this month

that Justice Amy Coney Barrett was asked a question about that topic in her confirmation, and she responded, “That is a question left open to Congress.”

### **Round and round**

Republicans will still have sharp questions for Jackson at the hearings. Rounds of questions from senators will start Tuesday, a second round is set for Wednesday, and outside witnesses will testify Thursday. With 22 members and 30 minutes each, Tuesday could get long.

Republicans have cited concerns such as whether Jackson is soft on crime, her representation of Guantánamo Bay detainees, her views on abortion rights, whether she might recuse from cases on racial preferences at colleges next term and a lack of a clearly stated judicial philosophy.

That will be on top of questions about her nearly 600 written opinions as a district court judge and about a year as an appeals court judge, which touch on administrative law, immigration and labor issues.

Missouri Republican Sen. Josh Hawley has raised questions about Jackson’s prior treatment of sex offenders, which at this point looks like the most inflammatory line of questioning. The White House has already pushed back on the accusation, and Jackson is expected to be well prepared with a response.

Jackson seems unlikely to make the sort of misstep that might cost her votes. She has faced questions from the committee several times before, as recently as a year ago for her appeals court nomination.

And senators have long complained that Supreme Court nominees can avoid answers to many questions because they deal with issues that might come before the court if they are confirmed.

Michael Gerhardt, a professor at the University of North Carolina law school who was a special counsel to the committee for numerous Supreme Court nominations, said he could see Republicans trying to do two things with questions at the hearings.

“To really try and press her, particularly her refusal to answer questions, and then interpret from the silence or refusals that she’s an activist judge,” Gerhardt said.