

Marquette University: New Law School Poll finds almost half of voters nationwide rate choice of next Supreme Court justice as “very important”

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MILWAUKEE – The Supreme Court vacancy created by the death of Justice Ruth Bader Ginsburg on Sept. 18 has immediately put a nomination to the Court at the center of political debate. A new Marquette Law School Poll, conducted nationwide Sept. 8-15, finds that before Justice Ginsburg’s death, 48 percent of respondents said the choice of the next justice was very important to them, with 34 percent saying it was somewhat important and 17 percent saying it was not too important or not at all important.

While the debate over the nomination is likely to increase the salience of the Court and any new appointment, the survey provides some perspective on the somewhat limited attention voters generally pay to the Court.

More than one in four respondents, 28 percent, say that a majority of the justices were definitely or probably appointed by Democratic presidents, while 72 percent say that a majority were definitely or probably appointed by Republican presidents. Prior to Ginsburg’s death, five of the nine justices had been appointed by Republican presidents.

Among those who say that the next appointment is very important to them, 21 percent think a majority were definitely or probably appointed by Democratic presidents while 78 percent think Republican presidents appointed the majority.

Perception of the majority also varies by party, as shown in Table 1. Over a third of Republicans believe that a majority of the Court were appointed by Democrats, as do one in five Democrats and more than a quarter of independents.

Table 1: Perceived majority appointed by which party, according to party identification

Party ID	Definitely a majority appointed by Democratic presidents	Probably a majority appointed by Democratic presidents	Probably a majority appointed by Republican presidents	Definitely a majority appointed by Republican presidents
Republican	4	31	49	16
Independent	3	24	50	21
Democrat	5	17	53	24

A majority of respondents perceive the Court as ideologically moderate, 54 percent, with 30 percent saying it is conservative and 5 saying it is very conservative. The court is seen as liberal by 9 percent and as very liberal by 2 percent. In short, much of the public sees a moderate or right-leaning Court, rather than an extremely ideological one.

Most voters have limited familiarity with the justices. Prior to her death, Justice Ginsburg was the most widely recognized of the nine justices, with 63 percent saying they knew enough to have a favorable or unfavorable opinion of her. Justice Brett Kavanaugh, whose confirmation in 2018 followed a contentious debate, was almost as well known, with 60 percent able to give an opinion about him. These are the best-known justices and, in the survey, 24 percent were unable to give an opinion of any of the nine justices, and just over half, 52 percent, could give an opinion of only three justices or fewer. Thirty percent could give an opinion of six or more justices.

Electoral politics and the Court

Among likely voters in the nationwide sample, 50 percent say that they will vote for former Vice President Joe Biden for president, 40 percent support President Donald Trump, Libertarian Jo Jorgensen receives 3 percent and Green Party candidate Howie Hawkins 2 percent.

Among likely voters who support Biden, 59 percent say that a court appointment is very important, while among Trump voters, 51 percent say the same.

The importance of Court appointments by vote choice is shown in Table 2.

Table 2: Importance of Court appointment, by presidential vote (among likely voters)

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Partisan differences among all adults in the degree of importance of the next appointment are shown in Table 3, with 56 percent of Democrats and 48 percent of Republicans saying that the appointment is very important to them. Table 3 shows the full set of responses by partisanship.

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Forty-seven percent approve of how Trump has handled appointments to the Supreme Court, while 52 percent disapprove. Among the several areas of presidential approval, this is his second highest level of approval, as shown in Table 4.

Table 4: Trump job approval, by issue

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Groups and issues

Religious groups have been deeply involved in cases before the Supreme Court in recent years. Table 5 shows that appointments to the Court are most important to both born-again Protestants and those who say they have no religious attachment, with non-evangelical Protestants (“mainline”) and Roman Catholics giving slightly

lower importance to appointments to the Court.

Table 5: Importance of Court appointment, by religious affiliation

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The 1973 *Roe v. Wade* decision, which made abortion legal, has been an enduring dividing line in American politics, and those with strong views give somewhat more importance to the next appointment, but not extraordinarily so. Of those who strongly favor overturning the *Roe* decision, 59 percent say that the next appointment to the Court is very important to them, while of those strongly opposed to overturning the *Roe* decision, 56 percent say the next appointment is very important. Those with less strong opinions about *Roe* are less concerned about the next appointment, with 44 percent very concerned among those who somewhat favor overturning *Roe* and 32 percent very concerned among those who somewhat oppose overturning the decision.

The Court has accepted for oral argument this fall a case that challenges the constitutionality of the Affordable Care Act (ACA), or Obamacare, which could uphold the act, strike down only part of it, or strike down the entire law. Among those who strongly favor striking down the ACA, 53 percent say that the next appointment to the Court is very important to them, while 61 percent of those who strongly oppose striking down the health care law say the next appointment to the Court is very important to them. Those less strongly in favor of striking down the law are also less concerned with the next Court appointment, with 41 percent saying the appointment is very important, as do 33 percent of those somewhat opposed to striking down the law.

Justifications for voting against qualified nominee

Looking ahead to a debate over a Trump nominee, 41 percent say that senators would be justified in voting against an otherwise qualified nominee “simply because of how they believe the justice would decide cases on issues such as abortion, gun control or affirmative action,” and 58 percent say senators would not be justified in opposing a nominee for this reason.

Half as many respondents, 21 percent, say a senator would be justified in voting against a nominee simply because of the political party of the president who made the nomination, with 78 percent saying this is not a justification for voting against an otherwise qualified nominee.

Fifty-one percent of respondents say that nominees should be required to publicly declare how they would vote on controversial cases before they are confirmed, while 48 percent say nominees should not be required to do so.

Despite growing partisan division over appointments to the Court, four-in-five respondents (82 percent) say justices should ignore the positions of political parties when making decisions, while 18 percent say they should support the views of one of the parties as part of their decisions.

Forty-four percent of respondents say the justices should consider public opinion about a case in reaching their decisions, with 55 percent saying they should not consider public opinion.

The practice of following established opinions has played a significant role in recent confirmation hearings, often focusing on *Roe v. Wade*, but 81 percent say the justices should overturn previous decisions if a majority believe the case was wrongly decided. Eighteen percent say they should follow the previous decision whenever possible.

Public views of the justices

Respondents were asked if they had a favorable or unfavorable opinion of each of the justices but were also offered the options of saying they hadn't heard of the justice or had not heard enough about them to have an opinion. Opinions and awareness, measured prior to Justice Ginsburg's death, are shown in Table 6.

Table 6: Recognition and favorability ratings of justices

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About the Marquette Law School Poll

The survey was conducted Sept. 8-15, 2020, interviewing 1,523 adults nationwide, with a margin of error of +/-3.3 percentage points. There are 1357 likely voters, with a margin of error of +/- 3.6 percentage points. Interviews were conducted by the National Opinion Research Center, using its AmeriSpeak Panel, a national probability sample, with interviews conducted online. The detailed methodology statement, survey instrument, topline results and crosstabs for this release are available at <https://law.marquette.edu/poll/category/results-and-data/>.