Midterm Elections 2018 and the United States Supreme Court

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The Supreme Court and Politics

Where the political balance hangs in the Supreme Court

With Justice Kennedy, a crucial swing vote in many cases, out at the end of July, the next appointee could shift the balance to a more conservative-leaning bench.

Source: Martin-Quinn (MQ) Scores, end of 2018 term
.. and [the President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law... Article II, Section 2, Clause 2

Democrats need a net gain of two seats to take control of the Senate. The states most likely to flip from red to blue are Nevada and Arizona. But even if the Dems were to win both of those, they’d have to hold seats in West Virginia, North Dakota, Montana, Indiana, Missouri, Ohio, Florida, Pennsylvania, Wisconsin and Michigan — all Trump states.

Republicans need to gain 8 seats for a filibuster-proof majority.

Democrats must gain 3 seats to control the Senate.

The battle for Senate control
Trump has appointed more appeals court judges than any other recent president at same point in tenure

Federal judges confirmed by Senate through July 12 of second year

Trump's picks are stark contrast to Obama era

<table>
<thead>
<tr>
<th></th>
<th>Supreme Court Justices</th>
<th>Appeals court judges</th>
<th>District court judges</th>
<th>Total</th>
</tr>
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<tr>
<td>Donald Trump</td>
<td>22</td>
<td>20</td>
<td></td>
<td>42</td>
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<tr>
<td>Barack Obama</td>
<td>9</td>
<td>27</td>
<td>37</td>
<td>72</td>
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<tr>
<td>George W. Bush</td>
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<td>Bill Clinton</td>
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<td>George H.W. Bush</td>
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<td>48</td>
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<tr>
<td>Ronald Reagan</td>
<td>14</td>
<td>35</td>
<td>51</td>
<td>45</td>
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<td>Jimmy Carter</td>
<td>10</td>
<td>36</td>
<td>46</td>
<td>46</td>
</tr>
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</table>

Note: Data as of July 12, 2018. One judge appointed by Ronald Reagan to a district court position, John Gibson, was subsequently appointed to an appeals court position. He is counted under both positions. Other judges, such as those appointed to specialized courts, are excluded.

Source: Pew Research Center analysis of Federal Judicial Center data.

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Implications for the Supreme Court

- Politicization (Garland, Gorsuch, Kavanaugh)
- Lowest public opinion since the 1950s (Kavanaugh) and lowest vote margin of any justices (Gorsuch and Kavanaugh) since Justice Matthews in 1881
- Effect on Perceived Legitimacy?
- New Median Voter?
- Movement over time to ideological poles
- Cases this term:
  - Age Discrimination (Mount Lemmon Fire District v. Guido)
  - Death Penalty (Buckely v. Precythe)
  - Money Bail (Timbs v. Indiana)
  - Immigration (Neilsen v. Preap)
Additional Resources

- First Mondays
- More Perfect
- SCOTUS blog
- The Most Dangerous Branch by David Kaplan
Questions?

- Shameless plug: Carrie Russell JD, PhD for Metro Council District 18 in August 2019
  - Seventh Generation Tennessean
  - Kids and Old Folks
  - Education, Infrastructure, Ethical and Fiscal Responsibility (i.e. clean up the codes)