

# Congress & The Courts



February 21, 2019

**POL 105: The Legislative Process**

**Isaac Hale**

**Winter 2019**

**UC DAVIS**  
UNIVERSITY OF CALIFORNIA

# Outline

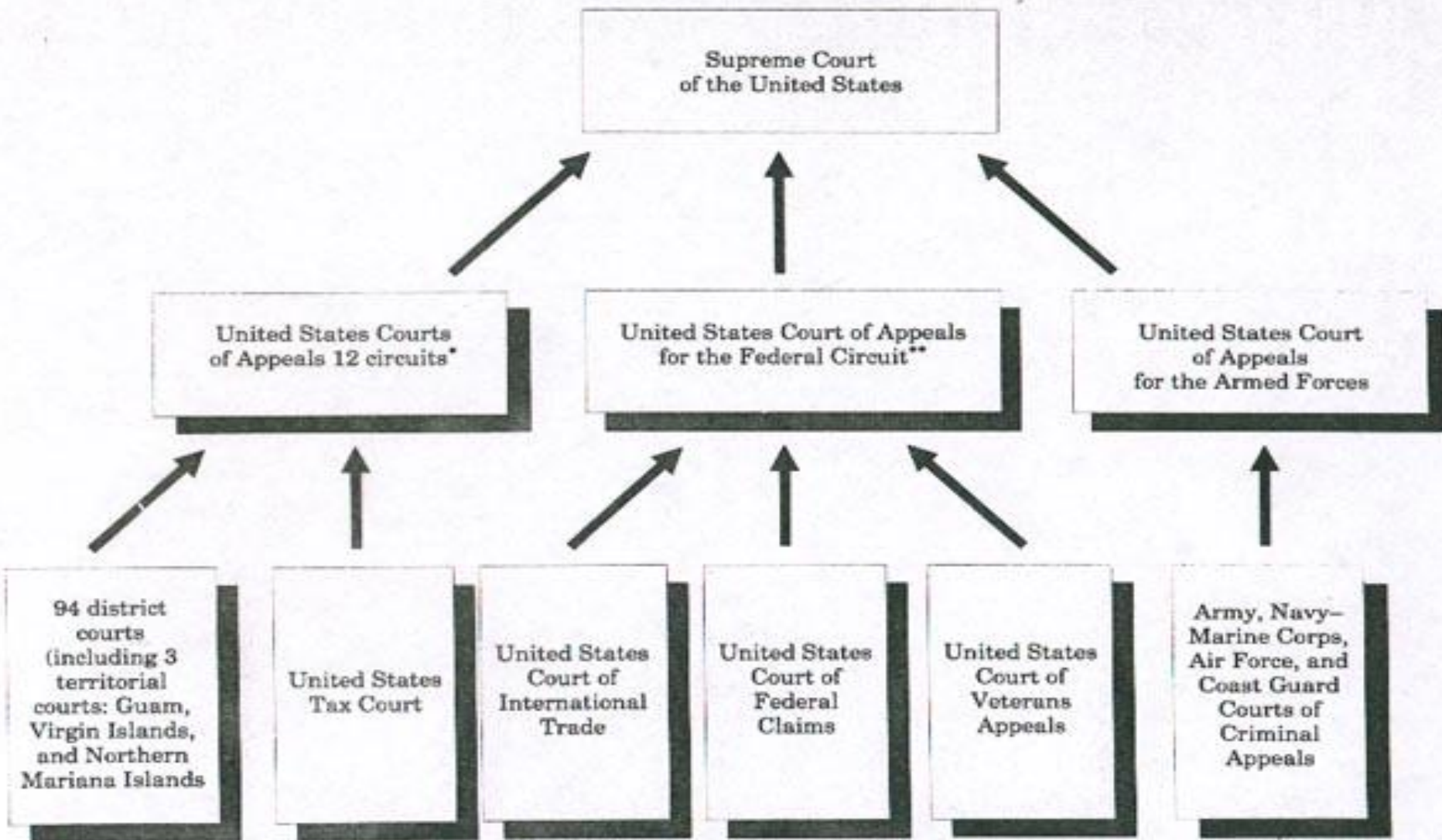
1. Federal Court Basics
2. The Senate and the Courts
3. The Supreme Court and the Pivotal Politics Model

# Federal Court Basics

## Article III

- What *formal* guidelines does Article III of the Constitution provide for the Supreme Court (SCOTUS)?
- Very few! It stipulates:
  - That there is a Supreme Court with a Chief Justice
  - Lifetime appointments of federal judges
  - That judges may be removed if they lack “good behavior”
  - That judicial salaries may not be reduced
  - That there be trial by jury for all criminal cases (except impeachment)
  - That the Court has both original and appellate jurisdiction
  - That Congress may create lower courts

# The United States Court System

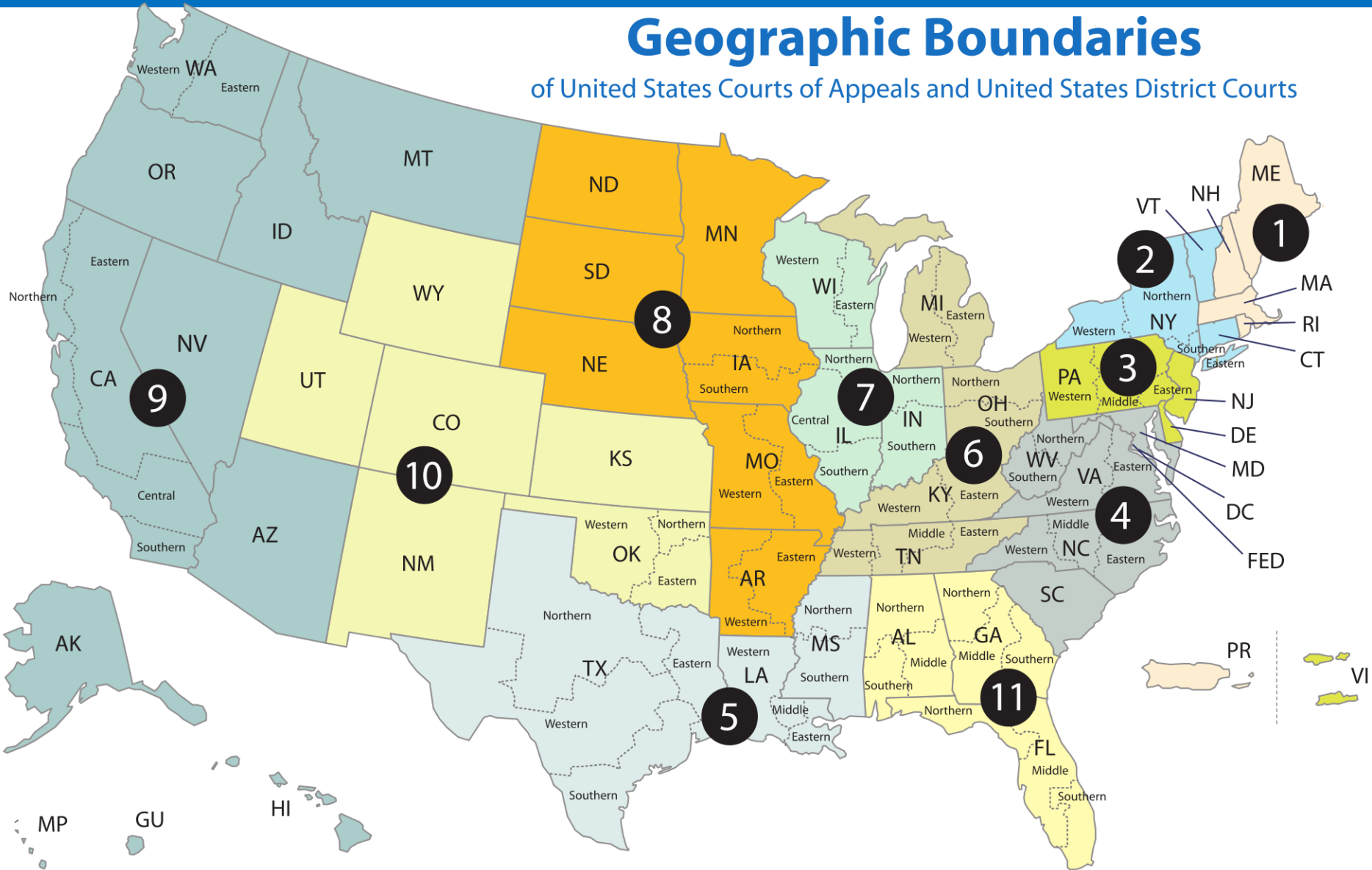


\* The 12 regional courts of appeals also receive cases from a number of federal agencies.

\*\* The Court of Appeals for the Federal Circuit also receives cases from the International Trade Commission, the Merit Systems Protection Board, the Patent and Trademark Office, and the Board of Contract Appeals.

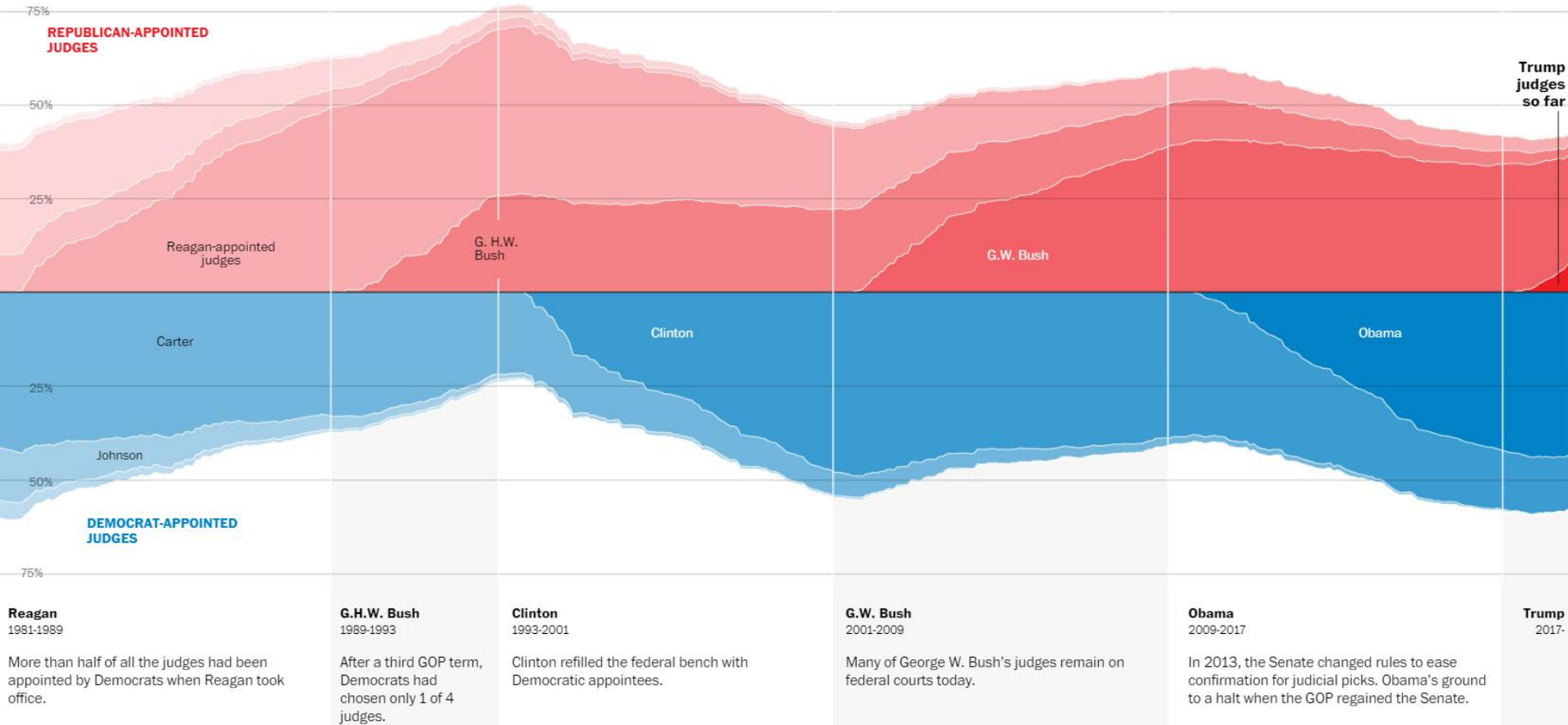
# Geographic Boundaries

of United States Courts of Appeals and United States District Courts



# The Senate as a Judicial Gatekeeper

Share of federal judges appointed by Republican and Democratic presidents since Reagan





# The Role of the Senate

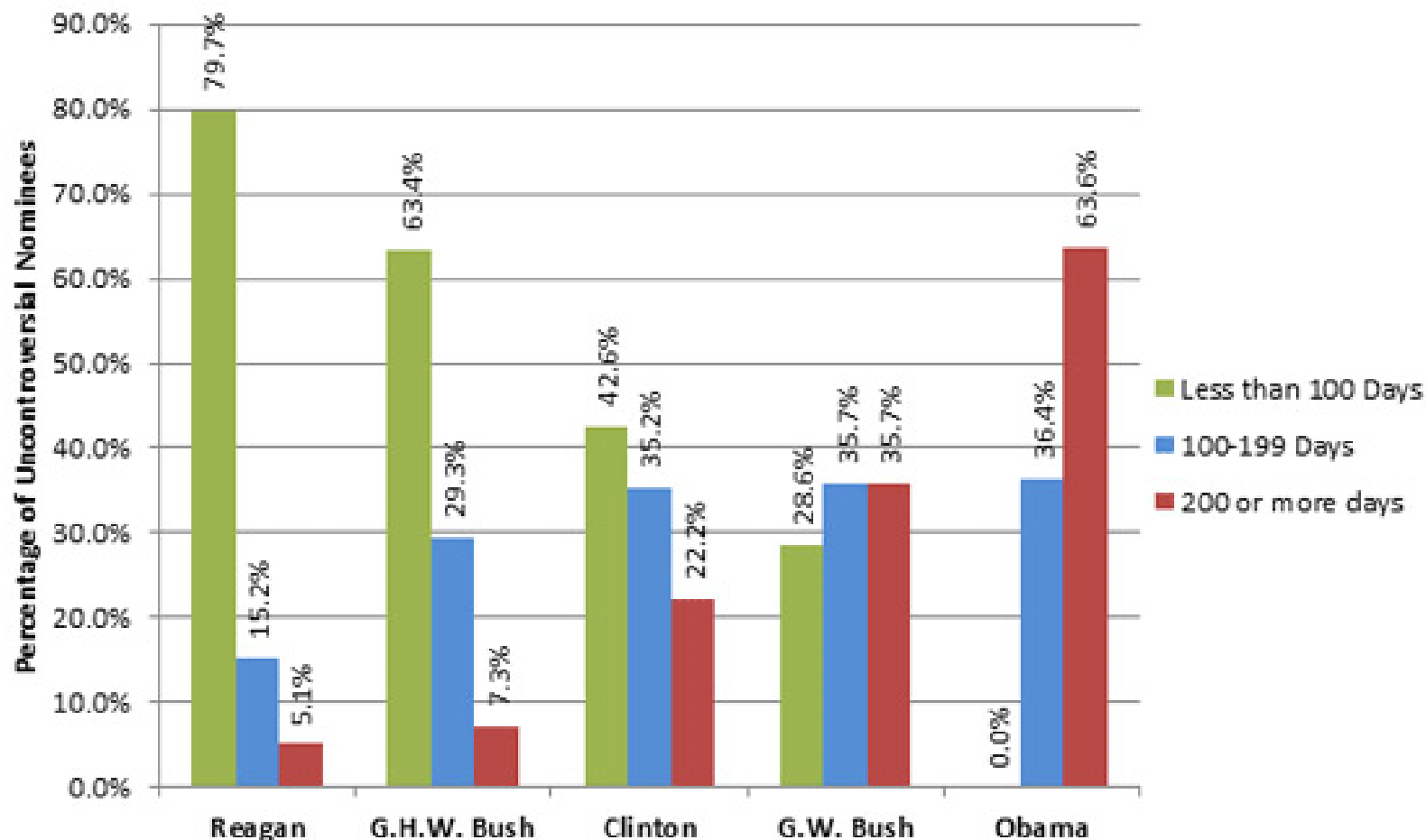
- The Senate must provide “advice and consent” for all executive and judicial nominees
- This includes the Supreme Court and lower Federal courts
- Nominees are first reviewed by the Senate Judiciary Committee
- If they are confirmed by the committee, they are referred to the floor for confirmation by the whole Senate

# Polarization and Judicial Confirmations

- Though Democrats controlled the Senate until 2015, Republicans successfully blocked a record number of President Obama's nominees
- How did Senate Democrats respond?
- This didn't fully work, since the Senate still allowed *blue-slipping*
- The Republican Senate (elected in 2014) obstructed Obama's nominees very effectively

# WAITING TIMES NOMINATION TO CONFIRMATION

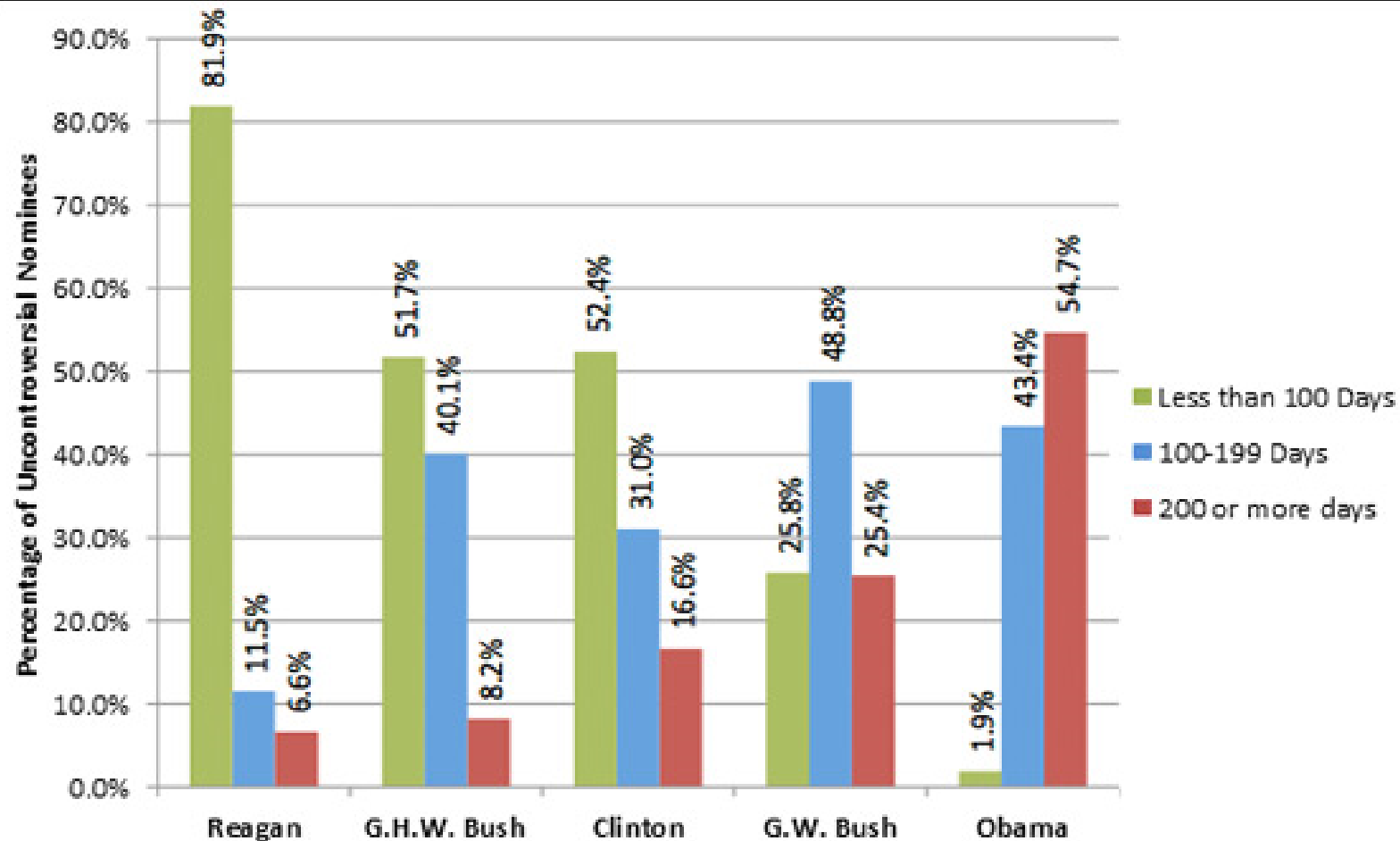
FOR UNCONTROVERSIAL NOMINEES TO THE FEDERAL APPEALS COURTS



Source: Congressional Research Service

# WAITING TIMES NOMINATION TO CONFIRMATION

FOR UNCONTROVERSIAL NOMINEES TO THE FEDERAL DISTRICT COURTS



Source: Congressional Research Service

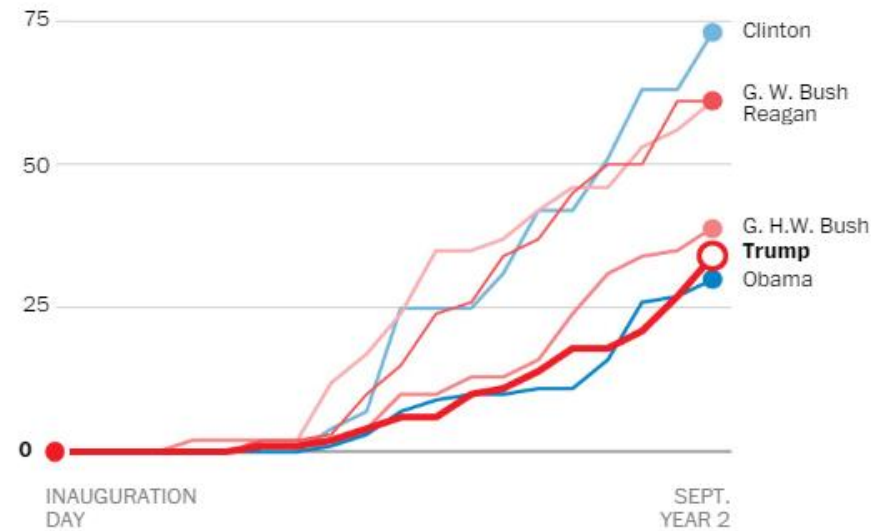
# Trump and the Courts

- President Trump is rapidly reshaping the courts
- When President Trump took office, there were 103 judicial vacancies
- He has a Republican Senate (with no judicial filibuster!)
- McConnell has reformed blue-slipping, streamlining Trump's nominees
- Trump's nominees have been conservative, and are demographically distinct from Obama's nominees

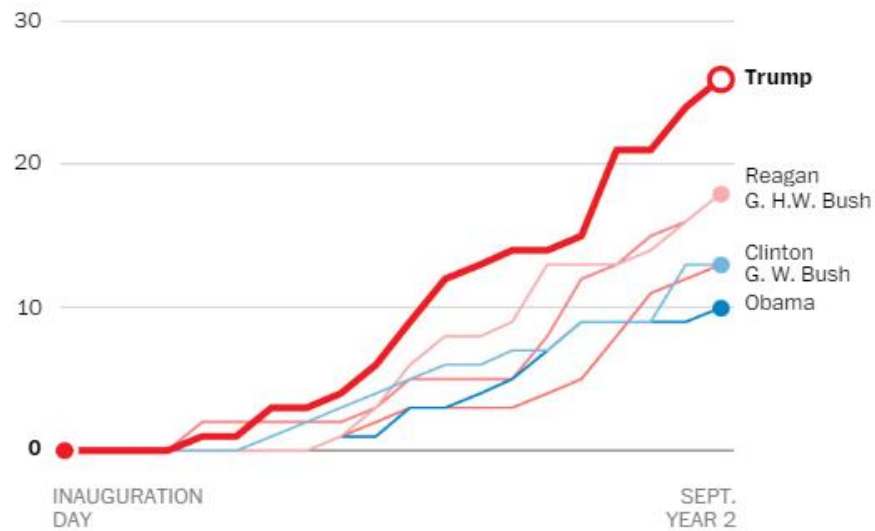
# Trump Has Appointed Judges At a High Rate

Number of judges appointed by each new president, by court type

DISTRICT COURT JUDGES

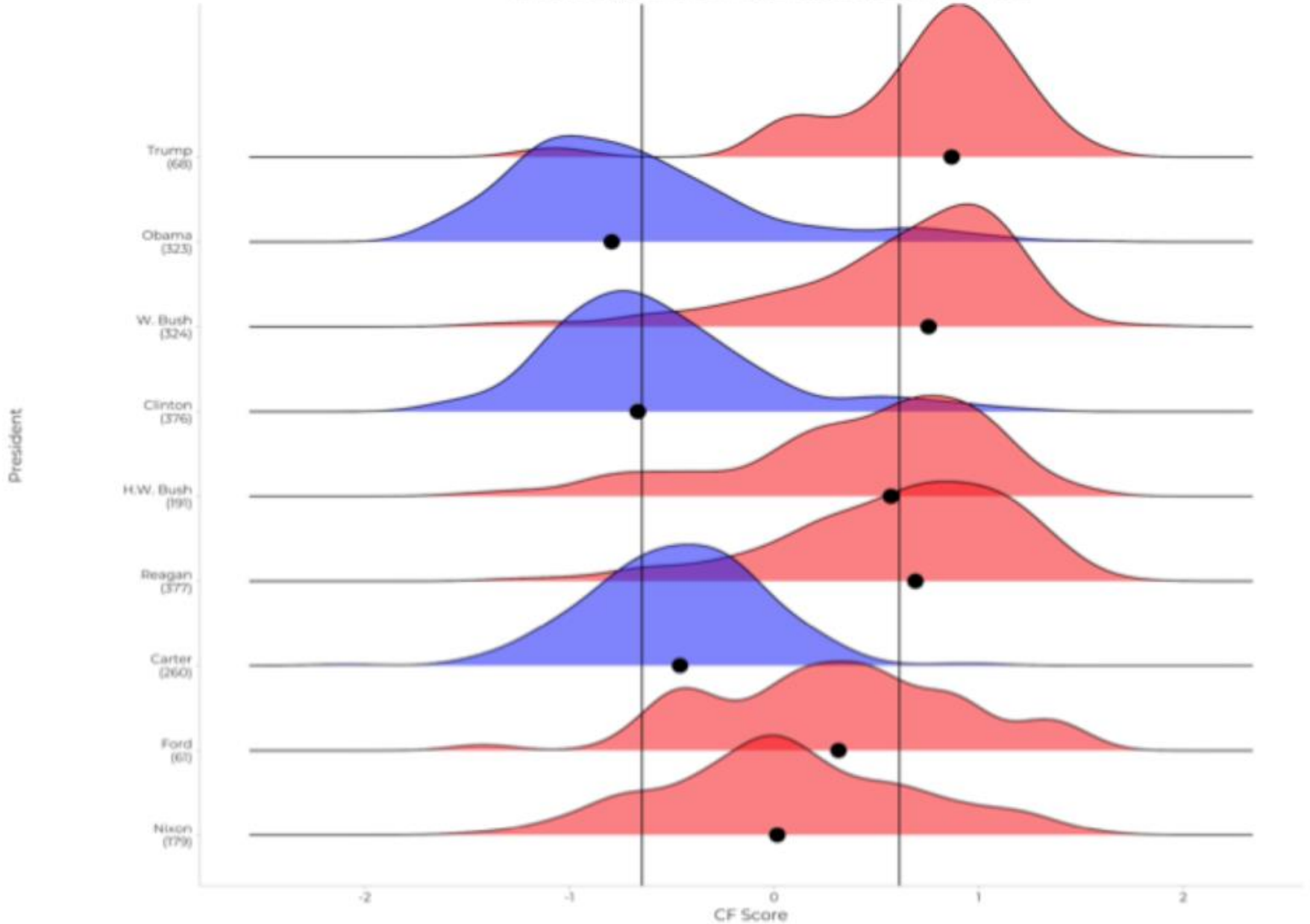


CIRCUIT COURT JUDGES



# DISTRIBUTION OF JUDICIAL CF SCORES BY PRESIDENT

Missing values imputed where applicable; party medians shown with vertical lines and president medians shown with dots  
Number of appointments with estimable CF scores in parentheses



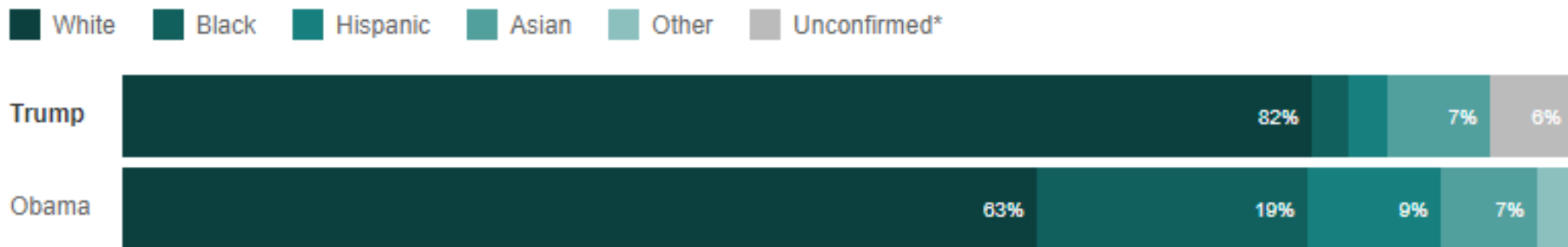
## From Obama To Trump: Makeup Of The Courts

Obama nominated 392 judges. Trump has nominated 155 so far. Patterns are emerging in how each is staffing the judiciary.

### By gender



### By race/ethnicity





# High-Profile Hearings

- Most Judiciary Committee hearings are uneventful
- Many nominees are blocked – but usually for political reasons unrelated to the hearing
- The Brett Kavanaugh hearings catapulted the Senate's role in court nominations to the forefront
- This isn't the first time a Supreme Court nominee has been held up over accusations of sexual misconduct
- <https://youtu.be/pleNXYFYOvl>

# Supreme Court Appointments

- Some nominees sail through (John Roberts, Ruth Bader Ginsburg)
- Others don't (Robert Bork, Harriet Miers, Merrick Garland)
- Cameron, Cover and Segal (Ch.34) argue three factors are critical:
  - Ideology of the nominee
  - Qualifications of the nominee
  - Status of the president
    - Election year vs. non-election year



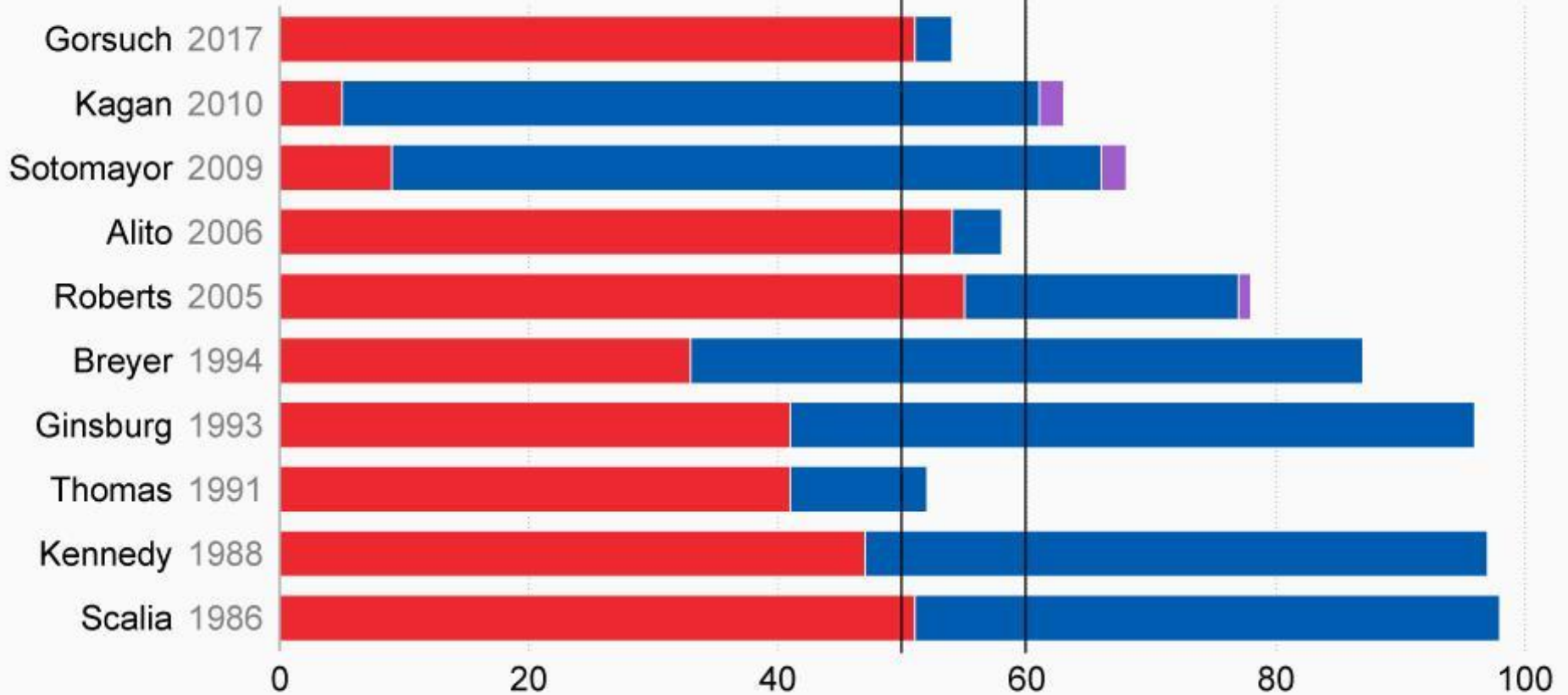
# Votes for Supreme Court Justices

Senate confirmation votes for U.S. Supreme Court Justices since 1986, by party

Voted yes (R) Voted yes (D) Voted yes (I)

50 votes for confirmation

60 votes to break filibuster



@StatistaCharts

Sources: Washington Post, New York Times

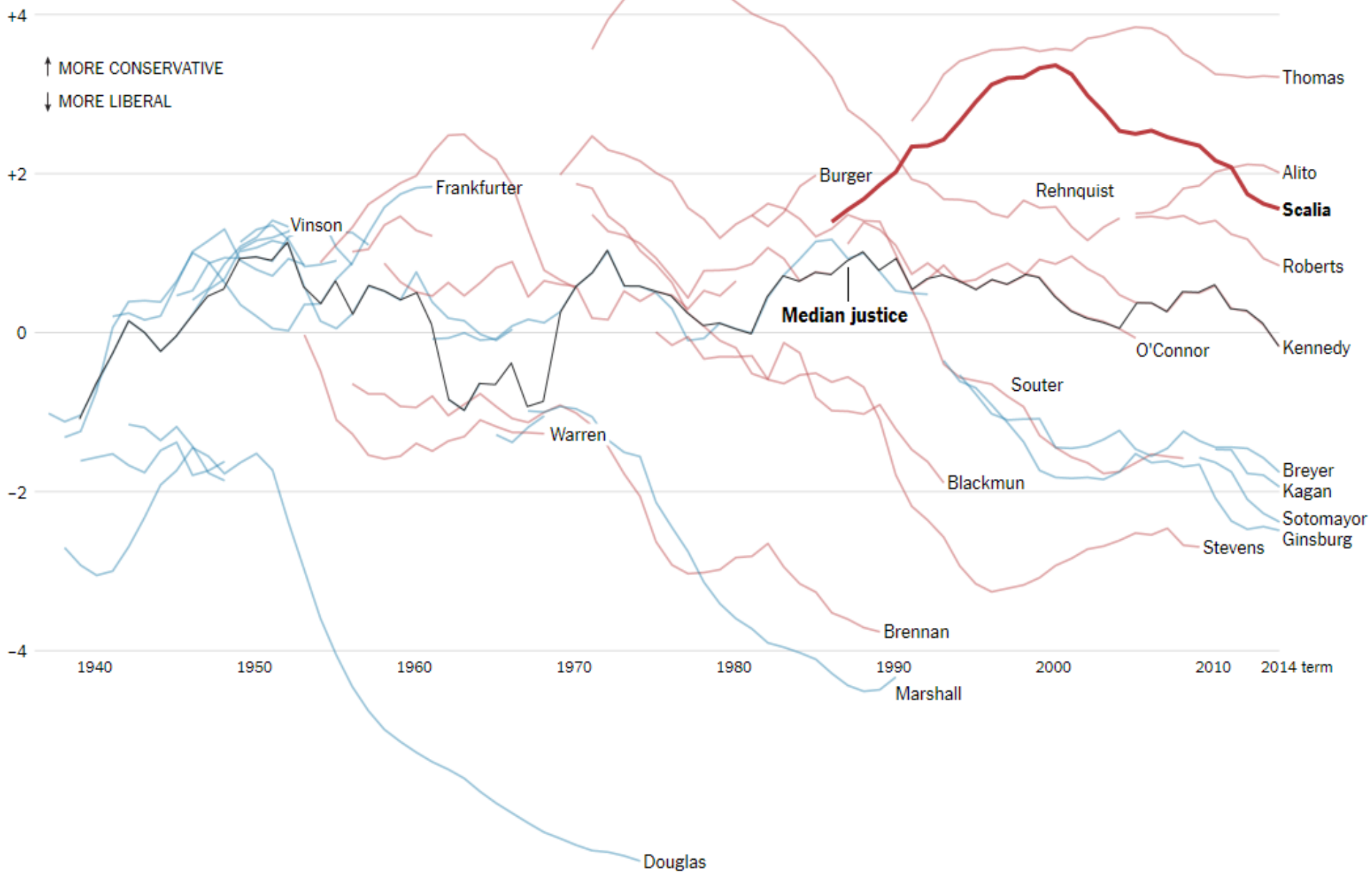
statista

The Statistics Portal  
www.statista.com

# The Court and The Pivotal Politics Model

# Justice ideology based on Martin-Quinn scores

— Nominated by a Republican — Nominated by a Democrat



# Today's Court

Sotomayor

Ginsburg

Kagan

Breyer

Roberts

Gorsuch

Alito

Kavanaugh

Thomas

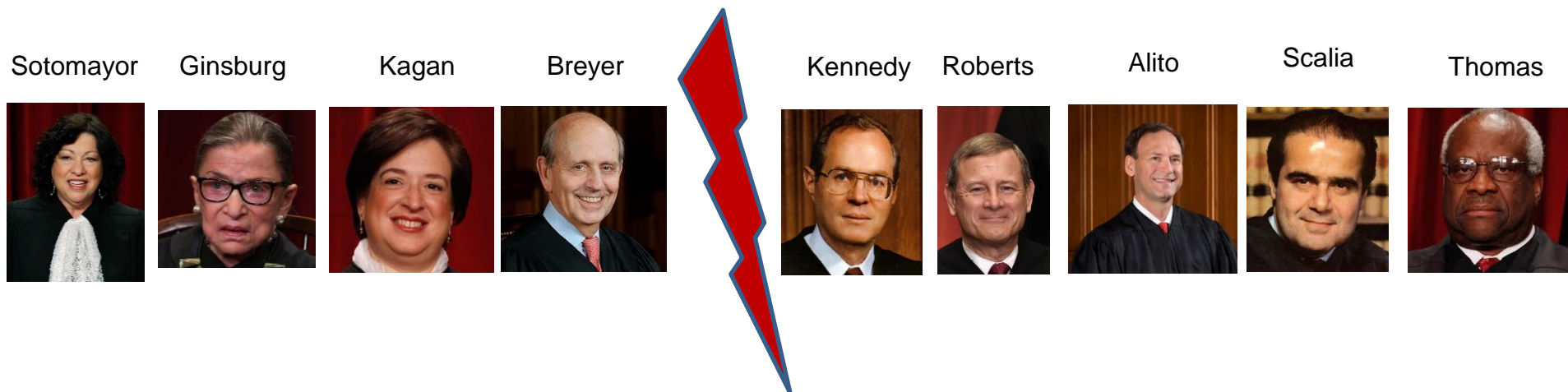


LEFT

RIGHT

- Who is the median justice?

# The Supreme Court Before Scalia's Death

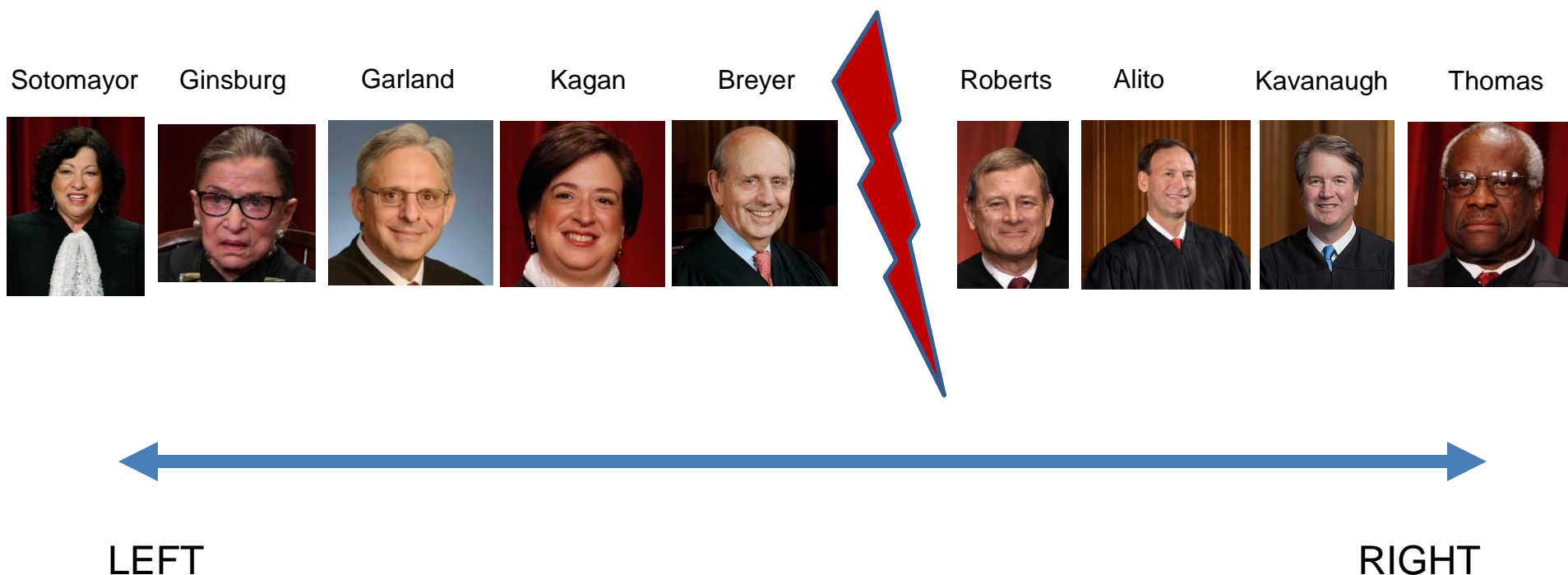


LEFT

RIGHT

- After Scalia dies, the Court has 8 members until Trump takes office
- Why was the failed attempt to replace Scalia with Merrick Garland so important?

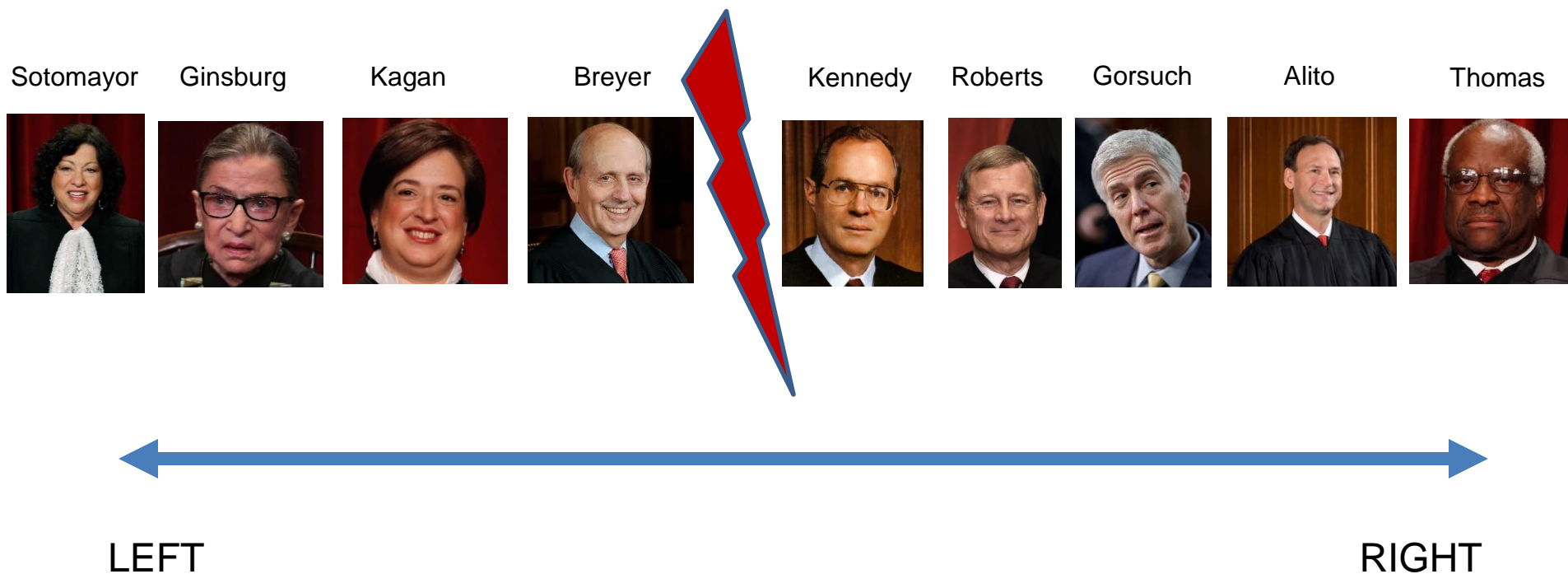
# What If The Senate Had Confirmed Garland?



- Let's assume that Trump still nominated Kavanaugh to replace Kennedy
- Who would be the pivotal Justice?

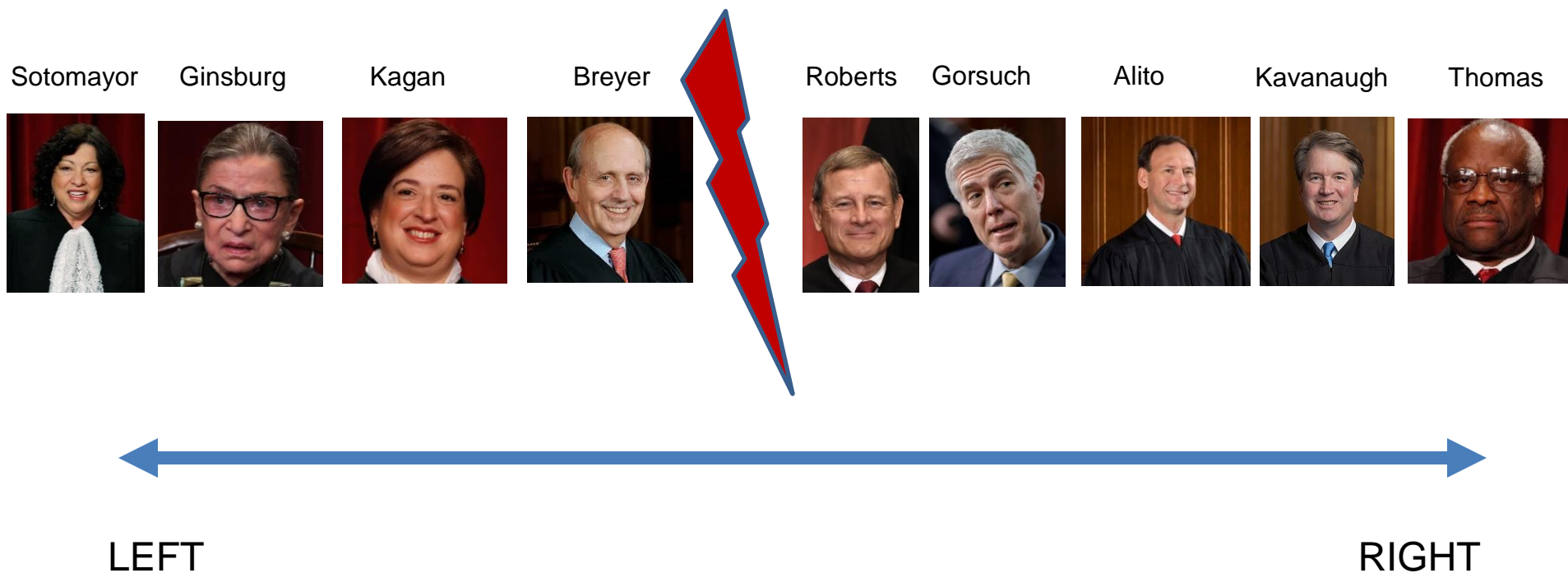


# The Court Pre-Kavanaugh



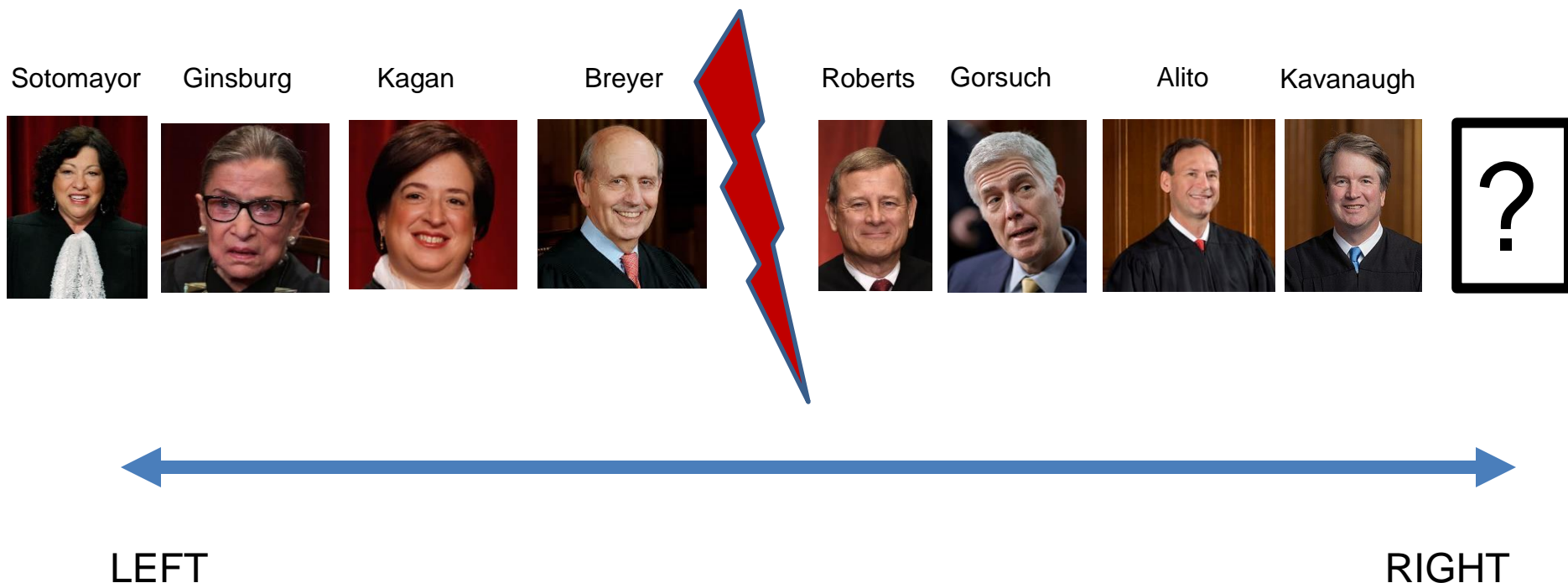
- Who was the median justice?

# What Could Happen Next?



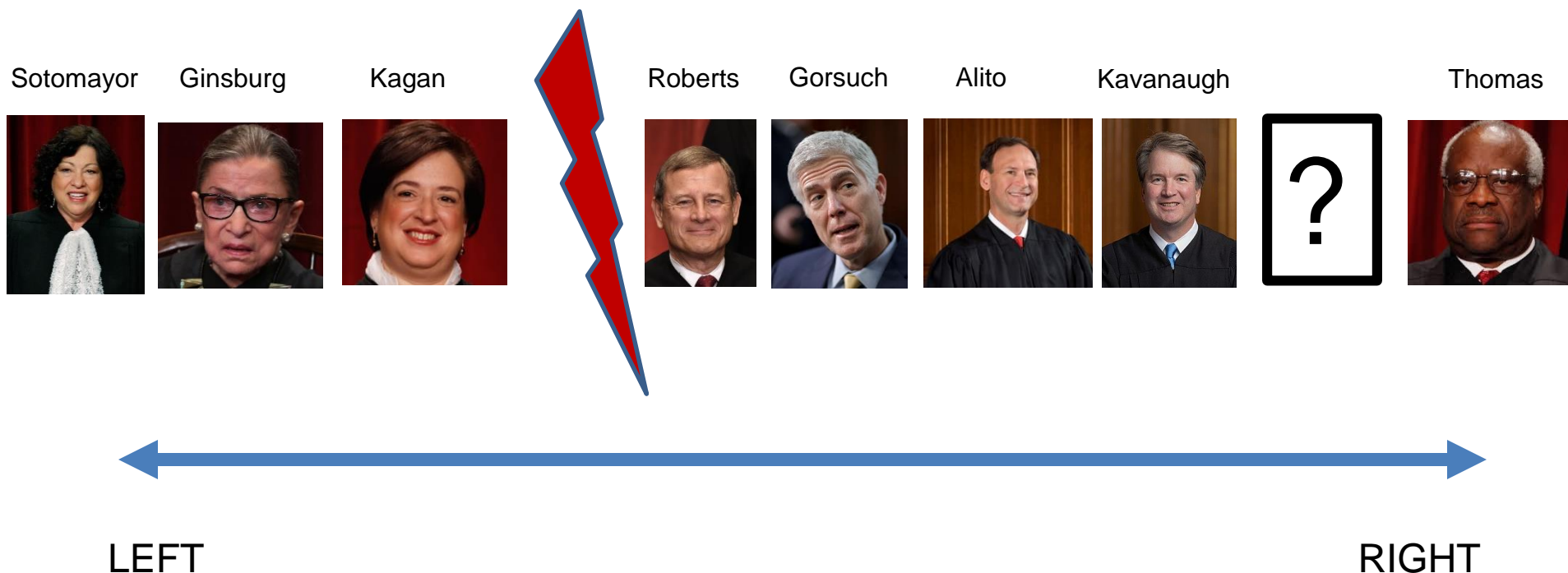
- The oldest Justices are Ginsburg (85), Breyer (80), and Thomas (70)

# What If Thomas Retired Tomorrow?



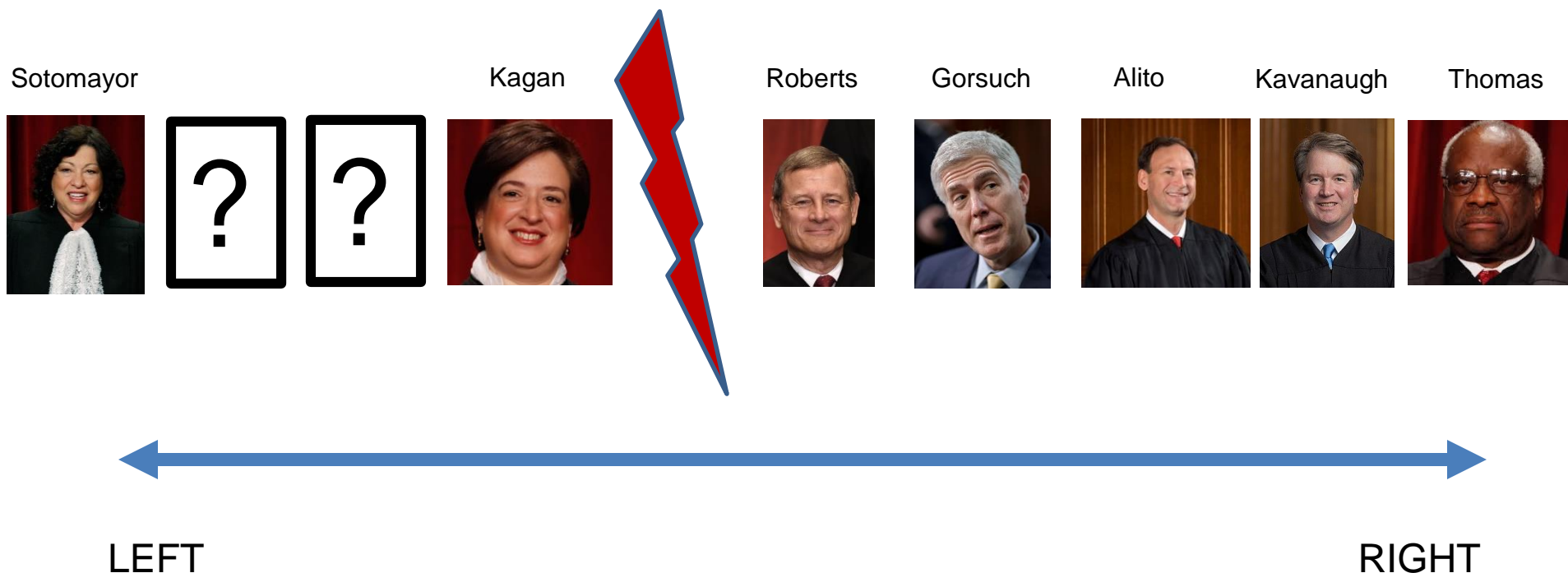
- Let's assume Trump someone nominates a Kavanaugh-like Justice
- Who is the new pivotal justice?

# What If Breyer Retired Tomorrow?



- Let's assume Trump someone nominates a Kavanaugh-like Justice
- Who is the new pivotal justice?

# What If Ginsburg and Breyer Retire in 2021?

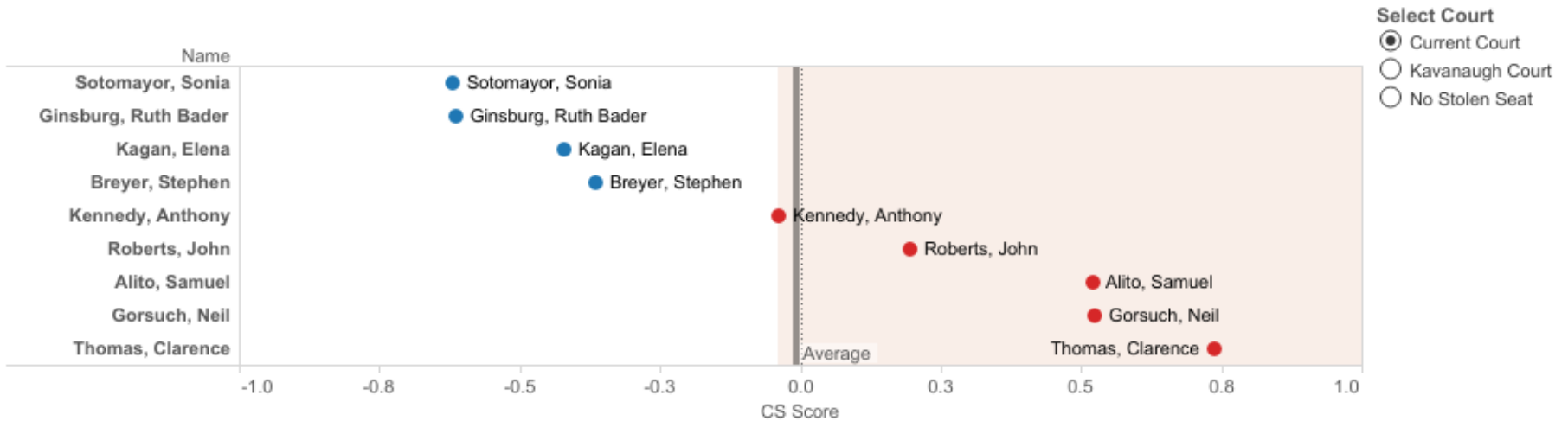


- Let's imagine a Democrat is president in 2021
- Who would be the pivotal Justice?

# Q&A

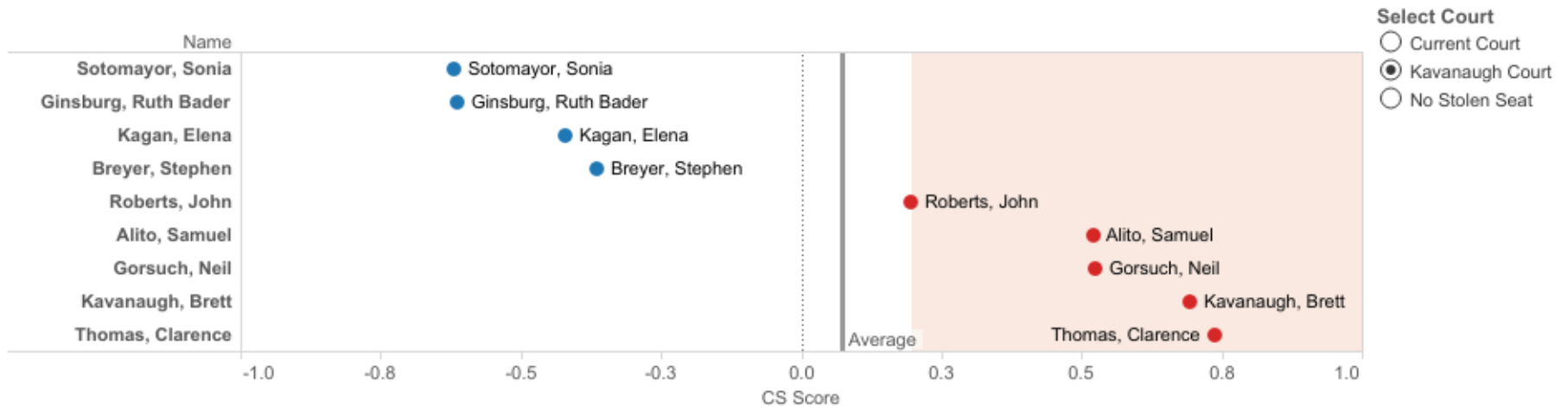
# The Court Pre-Kavanaugh

## Supreme Court Ideology: *Current Court*



# The Court With Kavanaugh

## Supreme Court Ideology: *Kavanaugh Court*





# What If Merrick Garland Had Been Confirmed?

## Supreme Court Ideology: *No Stolen Seat*

