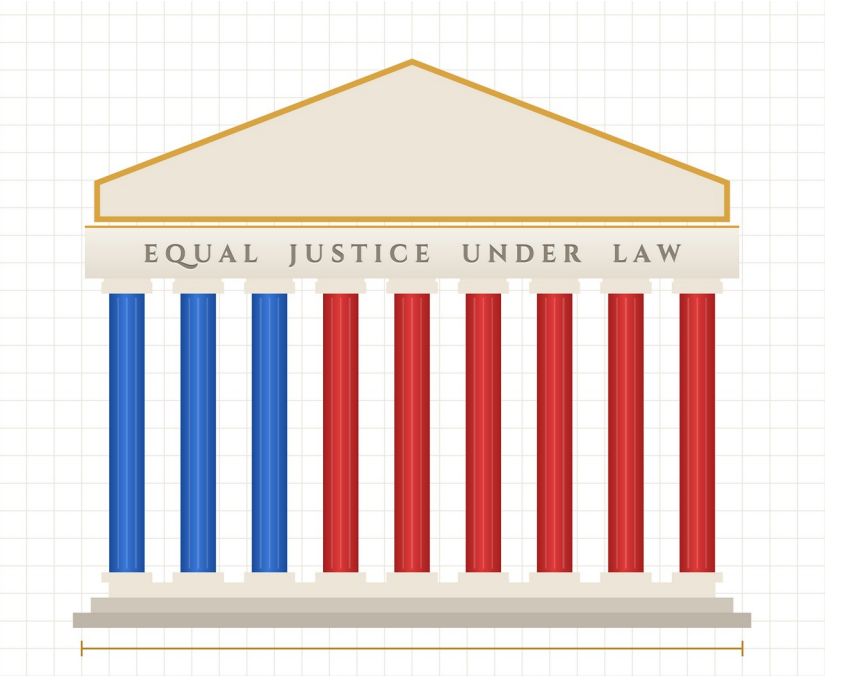
Umpires No More?

Has the Judiciary Become a Third Political Branch? Is That Constitutional?

By Bryan Kaufman

They judge the nation. Now you judge them.



CERTIORARI PRESS

Umpires No More? Has the Judiciary Become a Third Political Branch? Is That Constitutional?

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This book is commentary and analysis for general readers. It is not legal advice. Descriptions of reported conduct reflect published reporting and the responses of the people involved; no allegation is presented as proven unless a court or official body found it.

A note on how this book was made. This book was written with Claude, an AI assistant made by Anthropic. The author conceived the book and its argument, directed the research, and reviewed and revised numerous drafts before approving this final version. Claude helped draft the text, research and fact-check it, and create the charts, cover, and design. Every quotation and citation was checked against primary sources, as documented in the Cite-Check Report at umpiresnomore.com/cite-check. The arguments and conclusions are the author's own.

Court records are current through mid-October 2026. Quotations from judicial opinions, Senate hearing records, and public statements come from the sources listed at the end of the book. Charts and diagrams were created for this book.

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BEFORE YOU BEGIN

Author's Note

"A judge sworn to decide impartially can offer no forecasts, no hints." — Ruth Bader Ginsburg, opening statement, July 20, 1993

Here's the deal. We line up what Supreme Court nominees told the Senate with how they actually voted. Justices picked by both parties get the same treatment. And every accusation comes with the best comeback its defenders have.

About the title. At his 2005 confirmation hearing, John Roberts told senators a judge should be like an umpire: calling balls and strikes, never playing in the game.

This book asks whether today's Court still looks like the umpire, or more like one of the teams. Hence the question mark: the evidence is all here, and the verdict is yours. (Chapter 5 has the full story.)

A note on sources. Every court opinion, citation, and opinion quote was checked against CourtListener and Descrybe in September and October 2026. Hearing testimony was matched to the printed Senate hearing records, and news events to the original reports. The Cite-Check Report at umpiresnomore.com/cite-check shows how each item was checked. Court records run through early October 2026.

How to use this book. Every chapter opens with "The short version," a quick summary. Cases are laid out as *The Testimony*, *The Ruling*, *The Charge*, and *The Defense*. Chapters close with **Connections** and **Historical context** boxes that tie everything together. The Scorecard at the end sums it all up. Every chapter also ends with two "Check yourself" questions, with answers at the back. A note on color: blue always marks Democratic appointees and red marks Republican appointees. Purple marks majorities that mix both. No other color in the book stands for a party.

START HERE

Start Here: The Big Question

> **The short version.** The framers built the Supreme Court to stand apart from politics. This book argues it now looks more like a political branch than at any point in modern memory. It also gives the other side every chance to answer back. Then it hands you the most important power in this story: the power to judge the judges.

September 12, 2005. John Roberts, nominated to be Chief Justice, tells the Senate: "Judges are like umpires. Umpires don't make the rules, they apply them." It becomes the most famous job description in American law.

June 29 and 30, 2026. The Court he leads closes its term with four blockbusters in two days. It lets the President fire an FTC commissioner, 6–3, with every Republican appointee on one side and every Democratic appointee on the other. It tells him he can't remove a Fed governor without notice and a chance to respond, 5–4, with Roberts and Kavanaugh joining the three Democratic appointees. It strikes down his order on birthright citizenship, 6–3, with three Republican appointees siding with the Democratic appointees. And it upholds state limits on girls' sports teams, 6–3.

Same Court. Same week. One ruling looked like a party-line vote. Another looked like an umpire calling the President out. Which is the real Court? That is the question this book helps you answer.

The trust gap. In September 2026, just before the new term opened, 34 percent of Americans approved of the job the Supreme Court was doing, according to Gallup, essentially tied with the record low of 33 percent set that July. In 2000, Gallup's first reading, 62 percent approved, still the high point. Look closer and a second story appears. Republican approval fell from 79 percent in September 2025 to 58 percent in July 2026, after the Court ruled against the President on tariffs and birthright citizenship, a drop Gallup said "may" reflect those losses. By September it had recovered only partway, to 65 percent. Democratic approval stood at 12 percent in both polls. Many Americans grade the Court by whether their side won. (Other polls run higher: the Marquette Law School Poll put approval at 43 percent in September.) Approval isn't the only gap. In an Annenberg Public Policy Center survey released in September 2026, about a third of Americans couldn't name the three branches of government, and 4 in 10 either named another branch or weren't sure that the Supreme Court has the final say when it and the president disagree about the Constitution.

Why understanding matters. Political scientists James Gibson and Gregory Caldeira found that Americans who know more about the Supreme Court tend to be more loyal to it as an institution, the kind of support that can survive disagreement with particular rulings.

They also warned that partisan fights treating the Court as just another political institution can wear that support down. This book won't tell you whether to approve of the Court. It asks for something harder and more useful: judging it on its reasoning, not on who won.

You don't need a law degree for this. You don't even need to remember high-school civics. Everything you need is built right here, one block at a time.

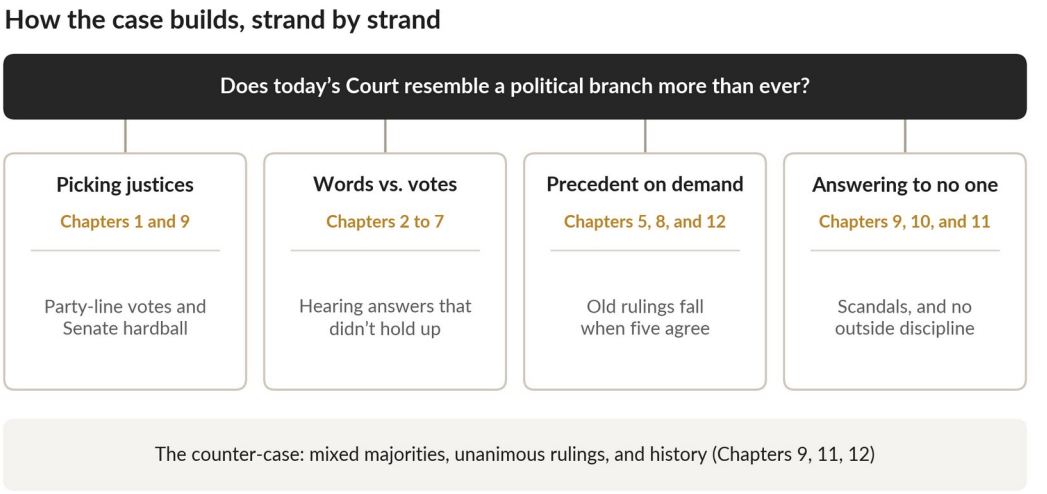
The power to judge the judges. You already know how much power judges hold, and Supreme Court justices hold the most. They can strike down laws passed by Congress and the states. They choose which cases to hear, and short of a constitutional amendment, they have the final word on what the Constitution means. They serve for life, and no justice has ever been removed from office. Voters never get to vote on them directly. But you hold a power of your own: the power to judge the judges. Not in a courtroom, but as a well-informed citizen, the kind whose views shape elections, confirmations, and the Court's standing with the public. This book gives you what you need to use it.

If you have never read a word about the Supreme Court, you are exactly who this book is for. By the last page, you'll be ready to judge the judges. You'll be able to:

- **Explain** how a case reaches the Court, how the nine justices decide it, and why most requests are turned away.
- **Decode a headline** like "Court rules 6–3," and know who wrote the opinion, who dissented, and what the numbers mean.
- **Read the Constitution's key clauses** in plain English, and know why the framers wrote them.
- **Follow the big fights** over precedent, the emergency docket, presidential power, and ethics, with both sides' best arguments.
- **Reach your own verdict** on whether the Court has become a political branch, and whether that is constitutional, using the same evidence the experts use.

The argument rests on four strands of evidence. Each strand gets its own chapters. And underneath it all sits the counter-case, because a claim this big has to survive its best objections.

Two questions, not one. The first is whether the Court has become a third political branch. The second is narrower than it sounds: if it has, is that unconstitutional? Being political isn't automatically unconstitutional. The Constitution builds politics into the process: the President nominates justices "by and with the Advice and Consent of the Senate." The evidence chapters test the first question. The verdict takes up the second.



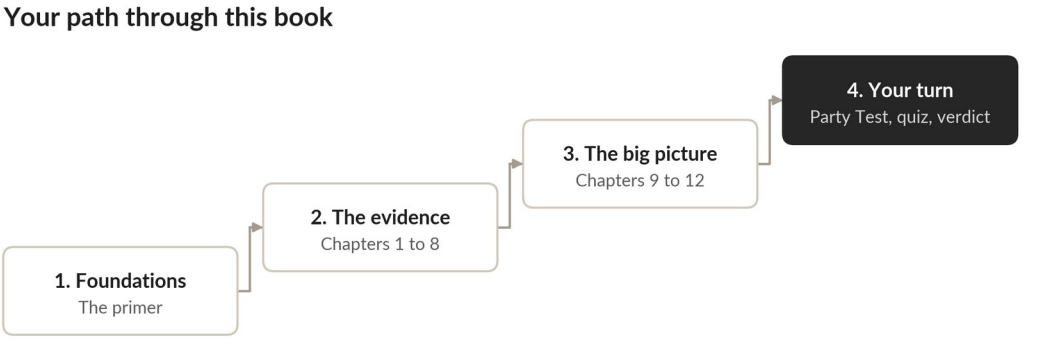
the book's argument · four strands of evidence, plus the counter-case

Keep this picture in mind. Every chapter ends with a short **Big question** note showing which strand it just added to, or where the counter-case pushed back.

How you'll get there

Think of this book as a staircase. You never have to jump.

Brand new? Here's your path. Read the primer first. Keep the key terms table handy; every legal word in the book is defined there. Start each chapter with its short version, and end it with the two Check yourself questions. The answers are at the back.



how the book is built · 4 steps

The primer gives you the foundations: how the Court works, what the Constitution says, why it says it, and how judges read it. After that, every new idea is built from pieces you already have, and the book will point back to them each time.

The last step is yours. After the twelve chapters, The Party Test puts a number on the big question, You Be the Justice lets you decide eight real cases yourself, and Your Verdict asks you to rule on both questions: is the Court political, and is that constitutional?

THE MAP

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THE PRIMER

How the Supreme Court Works

The short version. Nine justices. Thousands of requests a year. About 70 get the full treatment. Here's how the machine works, no law degree required. Before you can judge the judges, you need to know the job.

You already know more than you think. If you've ever heard a news anchor say "the Supreme Court ruled," you have the starting point. This primer fills in the rest, one plain-English step at a time, and the key terms table has your back whenever a word gets fancy.

The Supreme Court gets the final word on what the Constitution and federal law mean. It hears very few cases. And it picks almost all of them itself.

The Supreme Court in 60 seconds. If you remember nothing else, remember these eight facts. Everything else in the book builds on them.

- **Nine justices.** One Chief Justice and eight associate justices. Congress, not the Constitution, sets the number.
- **Chosen, not elected.** The President nominates; the Senate confirms. Justices serve "during good Behaviour," which in practice means for life.
- **Most cases are appeals.** They arrive from lower federal courts or, on federal questions, from state courts.
- **The Court picks its cases.** Thousands ask each year; about 70 are argued. It takes four votes to take a case and five to win it.
- **Briefs, then argument, then a vote.** Lawyers file written arguments, the justices question them in court, then vote in private. One justice writes for the majority.
- **A yearly rhythm.** Each term starts on the first Monday in October. The biggest rulings usually arrive by the end of June.
- **A fast lane, too.** Emergency requests can be decided in days, often in short unsigned orders.
- **The last word, mostly.** A ruling on the Constitution can be changed only by a later Court or a constitutional amendment. Congress can rewrite a law the Court has interpreted.