

Does it matter which party nominated a judge? Here's why it does.

By [Ruth Marcus](#) *Washington Post* February 20, 2024

“Why does the media insist on identifying the president who appointed the federal judges who make a newsworthy decision? It feeds the misimpression that our courts are just partisan policy arms of the party of the president behind their nomination. Competing judicial philosophies are the source of differences, and one school tends to come from Republicans, the other from Democrats. But the courts are not partisan policy [forums] embracing and continuing the substantive issue fight between the two major parties.”

This email, from a federal appeals court judge, arrived in my inbox shortly after I wrote a column about the [appeals court ruling denying](#) former president Donald Trump's claim of absolute immunity for his acts as president — an opinion, that, as I noted, came from two Biden appointees and a nominee of George H.W. Bush. As it happens, the judge who emailed me was named to the bench by President Ronald Reagan, but in this situation his party affiliation isn't relevant. Judges named by presidents of both parties bristle — equally and forcefully — at the journalistic practice of identifying judges this way, and I get that. No one wants to be thought of as a partisan hack, doing the bidding of political allies. And, as my judge friend noted, a big piece of the underlying reality — “competing judicial philosophies” — is far more subtle than hackery.

Still, as I replied to the judge, in the current environment, party *is* relevant. In a politically salient case, knowing the identity of the president who nominated a particular judge, as well as examining the partisan composition of a three-judge panel (the way federal appeals courts operate), is a reliable predictor of outcome.

Federal judges have argued passionately to me that it disserves the public to reinforce the notion of judges as political actors. I think it's the opposite: It would be keeping relevant data from readers *not* to include this information. In recent years, as judicial philosophy has become an increasingly important factor in judicial selection for presidents of both parties, I have made it a practice to note the identity of the president who nominated the judge or judges involved. If judges are behaving in ways that could be predicted by their political affiliations, readers deserve to know. If they are ruling contrary to what might have been expected, that's significant, too.

Now comes an intriguing study by a Harvard Law School professor that buttresses my point — if anything, it suggests we have *underestimated* the impact of party affiliation on judicial outcomes. Alma Cohen, whose training is as an economist, examined 630,000 federal appeals court cases from 1985 to 2020 and found that the impact of party affiliation went far beyond hot-button issues such as guns or abortion.

Rather, she wrote, “the political affiliations of panel judges can help predict outcomes in a broad set of cases that together represent over 90% of circuit court decisions. The association between political affiliation and outcomes is thus far more pervasive than has been recognized by prior research.” Note, Cohen isn’t contending that partisan affiliation affects 90 percent of cases — just that it has a statistically significant influence on outcomes in this large class of decisions.

Cohen’s hypothesis is that Democratic judges and Republican judges “systematically differ in their tendency to side with the seemingly weaker party.” For instance, in civil litigation between individuals and institutions, such as the corporations or the government, “panels with more Democratic judges are more likely than those with more Republican judges to reach a decision that favors the individual party.”

The same holds true for other types of cases. “In the categories of criminal appeals, immigration appeals, and prisoner litigation, increasing the number of Democrats on a circuit court panel raises the odds of an outcome favoring the weak party,” Cohen wrote. Overall, “switching from an all-Republican panel to an all-Democratic panel is associated with an increase of 55% in the baseline odds of a Pro-weak outcome.” In immigration cases, an all-Democratic panel was twice as likely to produce a finding for the immigrant as an all-Republican one during the 35-year period she studied.

One criticism of earlier examinations of partisan differences among judges has been that they do not take into account unpublished decisions, which account for the vast majority of appellate action. Another is that they focus on the subset of rulings that generate dissents, just a few percentage points of all decisions and around 10 percent of published opinions, those that are deemed to have precedential value. But Cohen’s work showed similar partisan effects among both published and unpublished decisions, and in both unanimous and divided panels.

Among other interesting findings, the impact of a panel composed of nominees of both parties was not symmetrical: “A lone Republican judge on a panel with two Democratic judges has a stronger ‘moderating’ effect on the panel majority than does a lone Democrat on a panel with two Republican judges.” And Democratic appointees seemed more inclined to reverse lower-court rulings than their Republican counterparts: “In

civil litigation cases between parties of seemingly equal power, panels with more Democratic judges are less likely to defer to lower-court decisions.”

The real-world impact of these differences is striking. Had Al Gore become president in 2000 instead of George W. Bush, Cohen estimated that a two-term Gore presidency, and the judges he would have appointed, would have changed the outcome in about 10,000 cases over the next 20 years, including 2,500 improved outcomes for individuals in civil litigation, about 1,100 improved outcomes for private parties in civil suits against the government, about 2,500 improved outcomes for criminal defendants in criminal appeal, about 1,500 improved outcomes for immigrants in immigrations appeals and about 1,100 improved outcomes for prisoners in prisoner litigation.

“It’s important to know that this effect is not just in highly controversial cases,” Cohen told me. “It’s in almost all cases.”

All of which is to underscore not only why I identify judges by party, but, as the presidential election looms, how important it is for all of us to pay attention to the composition of the courts. Who becomes president makes a difference, not just for the Supreme Court, but for lower courts as well. As much we might prefer it to be otherwise, party matters.

A new global gender divide is emerging

Young men and young women's world views are pulling apart. The consequences could be far-reaching

[JOHN BURN-MURDOCH](#) *FINANCIAL TIMES* JANUARY 26, 2024

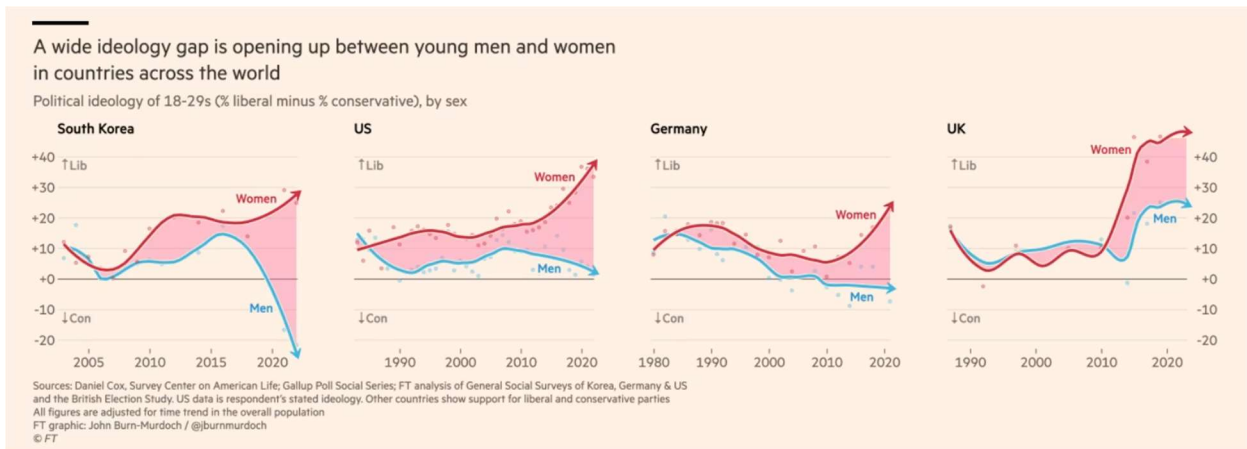
One of the most well-established patterns in measuring public opinion is that every generation tends to move as one in terms of its politics and general ideology. Its members share the same formative experiences, reach life's big milestones at the same time and intermingle in the same spaces. So how should we make sense of reports that Gen Z is hyper-progressive on certain issues, but surprisingly conservative on others?

The answer, in the words of Alice Evans, a visiting fellow at Stanford University and one of the leading researchers on the topic, is that today's under-thirties are undergoing a great gender divergence, with young women in the former camp and young men the latter. Gen Z is two generations, not one.

In countries on every continent, an ideological gap has opened up between young men and women. Tens of millions of people who occupy the same cities, workplaces, classrooms and even homes no longer see eye-to-eye.

In the US, Gallup data shows that after decades where the sexes were each spread roughly equally across liberal and conservative world views, women aged 18 to 30 are now 30 percentage points more liberal than their male contemporaries. That gap took just six years to open up.

Germany also now shows a 30-point gap between increasingly conservative young men and progressive female contemporaries, and in the UK the gap is 25 points. In Poland last year, almost half of men aged 18-21 backed the hard-right Confederation party, compared to just a sixth of young women of the same age.



Outside the west, there are even more stark divisions. In South Korea there is now a yawning chasm between young men and women, and it's a similar situation in China. In Africa, Tunisia shows the same pattern. Notably, in every country this dramatic split is either exclusive to the younger generation or far more pronounced there than among men and women in their thirties and upwards.

The #MeToo movement was the key trigger, giving rise to fiercely feminist values among young women who felt empowered to speak out against long-running injustices. That spark found especially dry tinder in South Korea, where gender inequality remains stark, and outright misogyny is common.

In the country's 2022 presidential election, while older men and women voted in lockstep, young men swung heavily behind the right-wing People Power party, and young women backed the liberal Democratic party in almost equal and opposite numbers.

Korea's is an extreme situation, but it serves as a warning to other countries of what can happen when young men and women part ways. Its society is riven in two. Its marriage rate has plummeted, and birth rate has fallen precipitously, dropping to 0.78 births per woman in 2022, the lowest of any country in the world.

Seven years on from the initial #MeToo explosion, the gender divergence in attitudes has become self-sustaining. Survey data show that in many countries the ideological differences now extend beyond this issue. The clear progressive-vs-conservative divide on sexual harassment appears to have caused — or at least is part of — a broader realignment of young men and women into conservative and liberal camps respectively on other issues.

In the US, UK and Germany, young women now take far more liberal positions on immigration and racial justice than young men, while older age groups remain evenly matched. The trend in most countries has been one of women shifting left while men stand still, but there are signs that young men are actively moving to the right in Germany, where today's under-30s are more opposed to immigration than their elders, and have shifted towards the far-right AfD in recent years.

It would be easy to say this is all a phase that will pass, but the ideology gaps are only growing, and data shows that people's formative political experiences are hard to shake off. All of this is exacerbated by the fact that the proliferation of smartphones and social media mean that young men and women now increasingly inhabit separate spaces and experience separate cultures.

Too often young people's views are overlooked owing to their low rates of political participation, but this shift could leave ripples for generations to come, impacting far more than vote counts.

Why not pay teachers \$100,000 a year?

By [Daniel Pink](#) *Washington Post* February 19, 2024

As a Spanish teacher at [Gerald G. Huesken Middle School](#) in Lancaster, Pa., he'd arrive in his classroom at 7:10 a.m. each day and cannonball into a morning that left no time for a bathroom break. He'd teach back-to-back-to-back-to-back classes until his lunch period, 27 minutes during which he also had to heat and eat the food he'd brought from home, email parents about problems and absences, and field questions from students. After school, he coached wrestling, advised the student council and chaired the GHMS world language department. Work, from grading papers to preparing lessons, spilled into the evenings and weekends he wanted to spend with his wife and three kids.

For his efforts, DiPerna — with a Bucknell University diploma and a master's degree in education — earned less than any college graduate he knew. So, last year, after a decade and a half in the classroom, he quit teaching to take a job as a sales representative at a large packaging company, trading a life of conjugated verbs for a new life of corrugated cardboard. “I wanted to be a public servant,” DiPerna, 42, told me. “I did not get into teaching to make a lot of money. But I also didn't get into it to barely scrape by.”

He earned more in his first partial year as a paper salesman than in his 15th year as a top-rated teacher. “I get paid more money,” he said. “And I can listen to the call of nature.”

DiPerna's gain is America's loss. Four years after the onset of the pandemic, students across the country are still struggling. [Test scores are falling](#). [Absenteeism is rising](#). Meanwhile, about [44 percent of U.S. schools](#) face a teacher shortage.

If we're serious about hanging on to capable educators, and attracting new ones, we should start treating them like true professionals. And one place to begin is compensation.

Why not pay America's teachers a minimum salary of \$100,000 a year?

The average annual salary for public school teachers during 2021-2022 [was \\$66,397](#), according to the National Center for Education Statistics, a nearly 8 percent pay cut, in inflation-adjusted terms, from a decade ago. Salary isn't the only reason educators exit the profession. But whether they work in suburban New York or rural Mississippi, teachers earn significantly less than they could in other fields.

The Economic Policy Institute, a left-leaning think tank, calls this difference the “teacher pay penalty.” EPI calculated that, in 2022, teachers earned only 74 cents on the dollar compared with comparably educated professionals. The right-leaning Hoover Institution reached a similar conclusion in its 2020 report on educator compensation, showing that, even adjusting for factors such as talent and experience, “teachers are paid 22 percent less than they would be if they were in jobs in the U.S. economy outside of teaching.”

Nothing against actuaries (median salary: \$113,990), but isn't helping a first-grader learn to read as valuable as assessing insurance premiums on your Hyundai Elantra?

For all the education fads of the past 50 years, researchers have found that what matters most for student learning — more than reducing class size or handing out iPads — is a high-quality teacher. One study by Harvard University economist Raj Chetty and his colleagues determined that students with effective teachers in fourth grade were more likely to attend and graduate from college as young adults and to earn more than their peers during their careers.

Some states and localities have attempted to address the compensation problem with complicated pay-for-performance schemes that award teachers bonuses hinged on student test scores. The results of those efforts have been iffy at best, scandalous at worst, said Barbara Biasi, a labor economist at Yale University. But her research has found that raising base pay for effective teachers, a simpler solution, deepens student learning and keeps good teachers on the job. Higher base pay also reduces dropout rates and narrows the achievement gap between White and Black students, as well as White and Hispanic students, according to other studies.

Raising teacher pay is also the rare 2024 policy proposal whose support spans the ideological divide. Sen. Bernie Sanders (I-Vt.) has introduced legislation requiring a federal minimum teacher salary of \$60,000 per year. Tennessee, led by Republican Gov. Bill Lee and an overwhelmingly Republican legislature, last year approved a law raising minimum teacher salaries in the state to \$50,000 by 2026.

But those well-intentioned initiatives are “take two aspirin and call me in the morning” remedies. We need a defibrillator — a serious jolt to awaken the patient from a near-death experience. A \$100,000 base salary would deliver that shock.

It would also jolt public budgets. Many ideas we'll explore in this “Why Not?” project would save money. This one is pricey.

A back-of-the-envelope calculation: If it requires about \$35,000 per teacher just to raise average pay to six figures, and the United States employs more than 3 million public school teachers, the total cost would be north of \$100 billion. Are you feeling defibrillated?

Although that figure represents just 5½ weeks of Medicare spending or well under half the Pentagon's weapons budget, it's still a massive annual sum. The federal government, which supplies about 7 percent of K-12 funding, shouldn't finance the whole cost. It could establish a matching program to share the burden — say, \$50 billion from the federal pot, \$50 billion from states and localities. But that \$100 billion would also likely mean raising taxes. Biasi and other scholars I spoke with questioned whether taxpayers would be willing to foot the bill.

That's why this hefty pay raise comes with two strings attached.

First, a longer school year. Eliminating summer break might spark a national uprising among 8-year-olds and tourism-industry executives. But the nine-month school year is a relic. (Not many kids in Anacostia or Bethesda spend July tending the soybean crop and preparing for harvest.) Professionals work year-round.

Teachers should, too. A longer school year could also reduce summer learning loss.

Second, greater accountability. Many teachers are excellent; some are heroic. But any parent knows that a few just aren't up to the job. Under current employment arrangements, it's difficult to steer these underperformers out of the profession. And with pay based largely on seniority, mediocre teachers lack much incentive to depart or even to improve. Low-performing, less-committed peers erode the morale of the majority of teachers who do their jobs well. Treating all teachers like professionals means showing a few teachers the door.

One mark of a winning idea is that it offers something for everyone to hate. Higher taxes would enrage conservatives. Reduced job security for public employees would infuriate liberals. So far, so good!

But many complicated issues remain to be worked out. How should we adjust for differences in cost of living? How would the pay scale evolve? What are the fairest ways to evaluate teachers?

Yet even skeptical economists have a soft spot for a radical increase in teacher pay. That's because "it calls attention to a real and pressing problem," said Michael Addonizio, emeritus professor of education policy at Wayne State University.

Biasi, the Yale professor, a mother of two toddlers, told me, "As a parent, it strikes me as a good idea. It seems like a good use of money."

And perhaps it would encourage talented college graduates to consider teaching instead of banking — and keep all-star educators like DiPerna in the classroom.

"I wasn't looking to make a fortune," DiPerna told me from his basement office between sales calls. "One hundred thousand dollars? That would have been enough for me."

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Your ideas on education

Thank you to the many readers around the world who have submitted their own Why Not? proposals. Here are three education ideas that caught our eye:

Why not decouple public education funding from property taxes? — Karly Code, stay-at-home mother, Bedford, Ky.

Why not require students to take financial literacy courses as a requirement for high school graduation? — Max Goldberg, retired marketing executive, Los Angeles

Why not ban social media for everyone under age 18? — Heidi Long, school librarian, San Diego

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