

## Justice Kruger has the right stuff

By David A. Carrillo and Brandon V. Stracener | February 4, 2022

To replace Justice Stephen Breyer on the nation's high court, we need a new justice who is a coalition-builder and a neutral arbiter, not another partisan warrior. The court and the nation would most benefit from a justice who will seek consensus on a court that struggles to reach unanimity in half its decisions. One short-list candidate has already proved that she has these qualities: California Supreme Court Justice Leondra Kruger should be the next U.S. Supreme Court justice.

There's something for everyone in Justice Kruger's profile. Democrats should be comfortable because no one on the current California Supreme Court is to the right of Justice Breyer — so Justice Kruger will satisfy every liberal litmus test. Her majority opinions somewhat favor the defendant in non-capital criminal cases, and she often agrees with the liberal tiger Justice Goodwin Liu. Yet Republicans will be reassured that Justice Kruger has never dissented from an opinion by California's Chief Justice (a former prosecutor and Republican appointee), and Federalist Society fans of the late Justice Antonin Scalia's textualist approach will be satisfied with Justice Kruger's method of reading statutes narrowly and disfavoring expansive interpretations.

This profile of Justice Kruger is based on an [analysis by the California Constitution Center](#) of every opinion and vote by Justice Kruger in her time on California's high court. That court has a nearly 90% unanimity rate in recent years, and we found no evidence of partisan voting behavior by the court's current justices; instead, they primarily decide by consensus. So we were unsurprised to find no evidence of partisan behavior by Justice Kruger herself. Indeed, she appears to be the median justice on a court with relatively little ideological daylight between its seven members. Our analysis shows that Justice Kruger applies a neutral approach that results in evenly distributed liberal and conservative positions. She's at the center of a centrist court.

When we read all 100 or so opinions Justice Kruger wrote in her seven years so far on California's high court, we saw a jurist who is precise and restrained in her opinions, coloring inside the lines to reach the right result, and careful to not overstep the judicial role. We looked closely at her separate opinions in nonunanimous decisions and saw that her thinking is guided by balanced analysis rather than policy considerations. Her statutory interpretation opinions in particular showed that Justice Kruger takes a narrow view of statutory construction and respects the line between the courts and the legislature. Her neutral-and-narrow approach produced some results that favored the left, and some that favored the right. The takeaway is that her analysis is driven by the text first, and she applies that analysis in every case regardless of outcome. That's the definition of a fair judge.

These are good indicators for how Justice Kruger might behave as a U.S. Supreme Court justice. Our analysis suggests that Justice Kruger would work with the majority to reshape their opinions to secure her vote, that she will concur to explain her distinct position, and that she will dissent only when there is no overlap between her view and the majority's. To us that sounds like the best-case scenario for a Democratic appointee on a court with a 6–3 Republican-appointee

majority. A practical person will play the long game and work to get the most done in that situation, rather than sulking in the corner writing scathing dissents.

And the nation's high court needs a voice from the states, not another federal judge — it already has eight of those. [We previously argued](#) that the high court needs diverse perspectives to rule justly on issues that affect the entire nation. Every current justice (and many of the other names in the mix for this seat) has a similar profile: exclusively federal bench service. No sitting justice has served in a federal or state cabinet position, or a state or federal legislature, and none served on a state court.

For a court that often rules on executive branch issues, having even one justice with executive experience would be an improvement. Justice Kruger has this experience, having served in the U.S. Solicitor General's office. And having a justice with a state law background is imperative for a court that often mediates interstate disputes and resolves state–federal conflicts. Justice Kruger is the only candidate with state high court experience, where every case is necessarily a big one, and she knows how to single out the cases that require a high court's attention.

Some will say that replacing Justice Breyer (who hails from California) with another native of the nation's greatest state will only maintain the status quo, changing nothing about the high court's divide. Yet hope lies in Justice Kruger's unique California characteristics: already experienced in building consensus in a group of seven high court justices that strives to get seven signatures on every decision. The move here is to install a mediator whose stellar intellect and unimpeachable fairness will command respect from both wings, and potentially bridge the gulf. If the outcome in even one U.S. Supreme Court case changes that's a win, and Justice Kruger's record in California proves that she can pull votes from Republicans and Democrats alike. On a court that only decides about 55% of its cases unanimously, adding a mediator like Justice Kruger can only improve that figure, and with it the administration of justice.

The nation needs a justice who is wise, fair, and consensus-driven — maybe now more than ever. To bring balance back to the entrenched wings of our high court would take the just-right combination of intellect, experience, and coalition-building ability. Of the shortlist candidates, only Justice Kruger has the right stuff.

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