



Neil Gorsuch was sworn in as the next Supreme Court Justice on April 10, 2017.

Our New Justice – Neil Gorsuch

For the first time in more than a year, there will be nine Justices on the Supreme Court, a new record for the longest vacancy since Congress settled on a nine-justice high court. Neil Gorsuch was sworn in as the 113th justice in the history of the Supreme Court on April 10, 2017 — but more importantly, as the ninth justice who will bring the court back to full strength after a 422-day vacancy. Justice Antonin Scalia died on February 13, 2016, causing the vacancy on the highest court.

Previously, the longest record for a vacancy on a nine-member Supreme Court was 389 days, the period between Abe Fortas' resignation on May 14, 1969, and Harry Blackmun's oath of office of June 9, 1970.

Now the newest, youngest (at 49) member of the court can get to work, and he faces a heavy workload. There are upcoming cases, including an important one on the separation of church and state. There are petitions to consider, which could lead to new cases on guns, voting rights and same-sex marriage. And there are cases already heard that might be deadlocked at 4-4, in which Gorsuch could be asked to cast the deciding vote after a rehearing.

The President and the Nomination

One of the top priorities for President Donald Trump was to fill the vacancy on the Supreme Court. The untimely death of Justice Antonin Scalia in February 2016 led to a battle between Democrats and Republicans. The Supreme Court consists of nine Justices, each with their views and beliefs which may

align with the Democratic (liberal) or Republican (conservative) parties.

President's Trump's victory in the November 2016 election meant the U.S. Supreme Court's conservative wing would shape its decisions for the immediate future.

As we know, the president appoints a great number of officials in the executive branch as well as justices in the judicial branch. Per U.S. Constitution (Article II, Section 2, Clause 2) states that the president "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Judges of the Supreme Court."

Each federal judge holds office for life and may be removed only by impeachment. There are no expressed qualifications for federal judges in the Constitution. Some former Justices have had no previous judicial experience including eight chief justices. However, all have had experience in public service. Among the remaining members of the current Court, all have had previous judicial experience.

On January 31, 2017, President Donald Trump nominated Judge Neil Gorsuch to the Supreme Court. The nomination of Gorsuch, a 49-year-old federal appellate judge from Colorado, set up a confirmation fight between Republicans and Democrats in Congress.

Using the Nuclear Option

Trump's nomination of Gorsuch set up an intense fight with Senate Democrats, still angry over the Republicans' decision to essentially ignore former President Barack Obama's nomination of Judge Merrick Garland for the empty Supreme Court seat last year. In the weeks leading up to the confirmation, Gorsuch met with 70 U.S. Senators trying to win them over, clarifying his position on important topics, and even distancing himself from some of Trump's comments.

Republicans changed Senate rules after Democrats pulled off the first-ever partisan filibuster of a Supreme Court nominee. Republicans triggered the so-called "*nuclear option*" meaning that Supreme Court nominees will now be confirmed by a simple majority, without ever needing to garner 60 votes from cloture, which ends debate (and takes a vote).

(over)

The parliamentary maneuver came after Democrats were able to filibuster and deny cloture on Gorsuch's nomination. Gorsuch was eventually confirmed by the Senate, 54-45 after a contentious few days.

Preventing cloture was a temporary win for Democrats, with Republicans now with this nuclear option will ensure easier confirmation for any future Supreme Court vacancies under President Trump.

Besides the Gorsuch nomination, other Trump-appointed nominees could soon follow. The current crowd on the court are older: Ginsburg is 83-years-old, Justice Anthony Kennedy is 80, and Justice Stephen Breyer is 78.

What's alarming for Democrats are that two of the oldest (Ginsburg and Breyer) are liberals, meaning Trump could replace them with conservatives in the event of illness, death, or retirement. The nightmare scenario for liberals, as NYU law prof Barry Friedman told the *New York Times*: "In the worst case, we end up with a 7-2 conservative court and a relatively young one at that. This could be a typhoon for the Supreme Court."

DEFINE the following terms.

1. filibuster _____

2. cloture _____

3. partisan _____

Answers to the T-F Questions:
1. T 2. F 3. F 4. T 5. F 6. F 7. T 8. F 9. F

Definitions:

1. filibuster - a minority party in Senate can delay a vote on proposed legislation by making long speeches or introducing irrelevant issues.
2. cloture - a legislative procedure for ending a debate and taking a vote.
3. partisan - supporter of one particular party taking the stance or belief in their values

Discussion Review

TRUE OR FALSE? Write a *T* or *F* in the space provided.

- ___ 1. The Supreme Court Justices are considered "guardians of the Constitution."
- ___ 2. A vacancy on the Supreme Court occurs about once every couple years, so a president will probably have at two or three appointments during his or her term.
- ___ 3. The current justices get to vote on who will fill a vacancy.
- ___ 4. Article 2 of the U.S. Constitution describes the president's role in nominating a Supreme Court Justice.
- ___ 5. Justices are obligated to rule according to the ideology of the president who appointed them.
- ___ 6. After the president announces a nominee, it is presented to the voters to confirm.
- ___ 7. You meet the Constitutional requirements for a Supreme Court justice.
- ___ 8. The longest vacancy on the Supreme Court was six years.
- ___ 9. The Supreme Court Justices are relatively young, meaning unlikely any upcoming changes.

Update to Page 36 (Judicial Branch) of "Our Federal and State Constitutions"

Please make note on Page 36 of the worktext that the new justice is Neil Gorsuch. As discussed in this article, the vacancy caused by the untimely death of Anton Scalia was recently filled (April 10, 2017) by Neil Gorsuch.

This handout is offered by *AJS Publications*, a leading publisher of federal and state constitution teaching materials, and is reference to the worktext, **Our Federal and State Constitutions**. You may visit www.ajspublications.com for more product and ordering details.

