



Ruth Bader Ginsburg (center) passed away on September 18, 2020 leaving a vacancy on the Supreme Court.

With the death of Supreme Court Justice Ruth Bader Ginsburg, the high court is left with a vacancy. This comes as the 2020 Presidential Election heads into the final stretch.

Justice Ginsburg passed away from complications with pancreatic cancer. Ginsburg was appointed in 1993 by President Bill Clinton and served as the most senior member of the court's liberal wing. She delivered progressive (and favorable) votes on abortion rights, same-sex marriage, voting rights, immigration, health care, and affirmative action.

Ruth Bader Ginsburg was the first woman in American history given the honor to *lie in state* at the U.S. Capitol. The memorial capped days of commemorations of her extraordinary life of public service. She's also the first Jewish person to lie in state, another historic capstone to her extraordinary historic life.

Filling the Vacancy

Her death -- less than seven weeks before Election Day -- opens up a political fight over the future of the court. Addressing the liberal justice's death, Senate Majority Leader Mitch McConnell said Friday evening, "President Trump's nominee will receive a vote on the floor of the United States Senate."

As we know, the president appoints a high number of officials in the executive branch as well as justices in the judicial branch. This will be the third opportunity that President Trump has to reshape the highest court in the land fundamentally. In April 2017, President Trump selected Neil Gorsuch to replace Antonin Scalia after his unexpected death. Then in July 2018, President Trump nominated Brett Kavanaugh to replace retiring Justice Anthony Kennedy.

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.

If a vacancy exists, the Supreme Court still conducts its usual business of ruling on disputes from the lower courts. The battle over the nominated justice and the needed Senate confirmation hearings may cause the Supreme Court to operate with eight justices. Of the remaining eight judges, five were appointed by Republican presidents, three by Democratic presidents.

Nominee Amy Coney Barrett



Amy Coney Barrett, a federal appellate judge from Chicago and Notre Dame Law Professor, is the nominee to fill the vacancy in the high court.

President Trump nominated Judge Amy Coney Barrett (age 48) to fill Justice Ginsburg's seat on the Supreme Court, setting up an epic confirmation battle and potentially giving the court a more conservative tilt for a generation.

The highlights of Judge Barrett's career and life include being a federal appeals court judge, a former law clerk of Justice Antonin Scalia, and a mother of seven children. She has a conservative record and deep religious ties with writings on faith and the law. Democratic senators and liberal advocates have

warned that she could roll back abortion rights and invalidate the Affordable Care Act.

It will be difficult for Democrats to block Barrett since Republicans control the Senate. To be confirmed to the Supreme Court, she must get 51 votes in the U.S. Senate, a simple majority of the 100 senators. Democrats also argue that the new justice nomination should be put on hold until after the November election. The Democrats are citing Senate GOP leader Mitch McConnell's successful block of President Barack Obama's nominee to the court, Merrick Garland, in 2016. Republicans argued the seat should be left open because it was a presidential election year. Either way, Barrett must undergo a vetting process by the Senate Judiciary Committee that could take days or weeks.

Average Time to Approve New Justices

The current members of the court faced an average of 73 days:

Current Justice	President Who Nominated	Days from submission to final vote
Brett Kavanaugh	Trump	65
Neil Gorsuch	Trump	90
Elena Kagan	Obama	87
Sonia Sotomayor	Obama	66
Samuel Alito, Jr.	G.W. Bush	82
John Roberts, Jr.	G.W. Bush	23
Stephen Breyer	Clinton	73
Clarence Thomas	G.H. Bush	99

The vacant seat is critical to the future of a closely divided court. Each party will want to choose their candidate. President Trump will have leverage as the Republican Party controls Congress and has strong incentives to support their values and beliefs.

The longest vacancy on the Supreme Court was 27 months between the Tyler and Polk administrations before the Civil War. Tyler, derided as "His Accidency," because he was the first vice president elevated to the White House, also holds the distinction of a record eight nominees rejected or withdrawn.

What's Next?

A very different Supreme Court will meet in two weeks to grapple with the potential of 4-4 splits and a caseload that includes no less than the future of the Affordable Care Act and possibly the presidential election. As the next Supreme Court term begins, the justices will also find themselves in a spot they often seek to avoid: the center of a politically ferocious fight playing out across the street on Capitol Hill. It's been a mission of Chief Justice John Roberts to keep the court above the political fray, but that

will be impossible as election-related petitions flow into the court and the confirmation battle plays out across the country. Roberts will navigate a fraught moment in history, at a time when his own place on the court might be about to shift. On top of that, he must help plan a memorial for the late Justice Ruth Bader Ginsburg and balance the wishes of mourners with the reality that the court has been closed to the public since March because of the coronavirus pandemic.

GOP (Republican) officials are working at a rapid clip to move her nomination through the Senate Judiciary Committee. The confirmation hearings begin on October 12th with the goal of her approval before the presidential election on November 3rd. "The entire reason the Senate should act and act promptly to confirm a ninth justice is so that the Supreme Court can resolve any cases that arise in the wake of the election," said Sen. Ted Cruz (R-Texas). "This election is a closely contested election."

Conclusion

The Supreme Court consists of nine Justices, each with their views and beliefs, which may align with the Democratic (liberal) or Republican (conservative) parties. As we have studied, federal courts are often called the "guardians of the Constitution" because their rulings protect rights and liberties guaranteed by the Constitution. Through fair and impartial judgments, the Supreme Court Justices interpret and apply the law to resolve disputes.

REVIEW QUESTIONS

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

- ___ 1. If there are only eight justices, the Supreme Court will temporarily suspend and no rulings will take place.
- ___ 2. The Supreme Court Justices are considered "guardians of the Constitution."
- ___ 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. Supreme Court nominees always have previous judicial experience.
- ___ 6. Justices are obligated to rule according to the ideology of the president who appointed them.
- ___ 7. After the president announces a nominee, it is presented to the voters to confirm.
- ___ 8. Justice Ginsburg had the most conservative beliefs of any judge on the Supreme Court.
- ___ 9. There is still a judge on the Supreme Court that was nominated by G.H. Bush.
- ___ 10. The longest vacancy on the Supreme Court was six years.