A Supreme Seat For Life

- Post Editorial Reprint: “Ruth Bader Ginsburg spent her life fighting double standards. Republicans should not embrace one to replace her.”
- Student Activity: The Impact of a Supreme Court Justice: RBG”
- Post Reprint: “What’s next in the Supreme Court confirmation process for Amy Coney Barrett”
- Post Reprint: “Adams chose a new chief justice just before leaving office. Jefferson was furious.
- Student Activity: Modern Women Who Moved Society Forward
INTRODUCTION

Judicial Power in One Supreme Court

“Supreme Court Justice Ruth Bader Ginsburg dedicated her life to defying and dismantling institutionalized gender discrimination, both on her own behalf and on behalf of all people. The America we inhabit today, where women fly military fighter jets, occupy a quarter of the U.S. Senate and account for half of all first-year law students, is a different and better — though still far from completely equal — nation, due in no small part to the courageous career of Justice Ginsburg, who died on Friday, September 18,” wrote The Post Editorial Board.

The Constitution established the federal judiciary in Article III. Section I states that “The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” The Judiciary Act of 1789 created a Supreme Court with six justices and established the lower federal court system. The people appointed by the President and confirmed by the Senate — all men until Sandra Day O’Connor in 1981 and Ruth Bader Ginsburg in 1993 — set the precedents, establish whether Constitutional rights were violated or protected, and strike down laws that violate the Constitution or undermine the freedoms guaranteed all Americans.

When Ruth Bader Ginsburg was nominated to the Supreme Court she had already established her positions on gender equality and women's rights. She stood by principles whether writing the majority or minority position on cases heard before the Court. Her personal life was a model of love of family, respect for others (including those who disagreed with her), support for the arts and physical training.

With her passing, the public has been made aware of the process of presidential nomination and Senate confirmation. Debate arose whether this should occur while early voting is taking place and Election Day was so close. Refusal to give Merrick Garland a hearing in 2016 and other presidential appointments entered the debate.

We provide Post reprints and suggest activities to reflect on Ruth Bader Ginsburg’s life and impact on Supreme Court decisions and rights of all citizens, to inform on the judicial nomination process and to reflect on historic precedents.

Why is this so important? The Supreme Court in the (approximate) 100 cases it hears per term has impact on daily life, businesses, state legislatures and international issues. Its nine justices are a balance to the legislative and executive branches. They serve for life (or until they resign) and hold a supreme power.
Males dominated the America into which Ruth Bader was born more than 87 years ago — to a degree today’s generations may find unimaginable. It was still the kind of country where almost all professional pursuits were for men only and marriage and child-bearing were the presumed destinies of every girl. Ruth Bader’s mother had been obliged by her struggling immigrant family to take a factory job so that they could afford to send her brother to college, even though she, too, had been a brilliant student who graduated high school at 15.

Indelibly affected by this injustice, and others, the woman who would become Supreme Court Justice Ruth Bader Ginsburg dedicated her life to defying and dismantling institutionalized gender discrimination, both on her own behalf and on behalf of all people. The America we inhabit today, where women fly military fighter jets, occupy a quarter of the U.S. Senate and account for half of all first-year law students, is a different and better — though still far from completely equal — nation, due in no small part to the courageous career of Justice Ginsburg, who died on Friday.

She passed away having attained not only the heights of the legal profession, but also, improbably enough, the status of feminist pop culture icon. Dubbed “the Notorious RBG” by youthful admirers, Justice Ginsburg by the time of her death was the subject of Hollywood movies, songs, a board game and countless Internet memes. Justice Ginsburg clearly reveled in the acclaim and used the platform it gave her to encourage and influence young women. But there was nothing glamorous or frothy about the ferocious work ethic and attention to detail that enabled her to rise in the law decades earlier. Persuasive argumentation, not celebrity, won her five of the six gender-equality Supreme Court cases she litigated for the American Civil Liberties Union in the 1970s.

As an advocate, Justice Ginsburg took her cue from an earlier icon, Judge Learned Hand, who famously defined the “spirit of liberty” as the willingness to “understand the minds of other men and women.” She accordingly presented nine male justices with cases in which men had been disadvantaged by legally enshrined gender stereotypes, demonstrating that the harms extended to everyone, and engaging the court’s empathy. In the 1973 case of Frontiero v. Richardson, for example, she showed that it was irrational, and unconstitutional, to deny the husband of a female Air Force officer the dependent
benefits that a male officer’s wife would have been entitled to.

As a justice herself, in 1996, Justice Ginsburg persuaded all of her colleagues but one to join her in striking down the male-only admissions policy of the state-run Virginia Military Institute. “Generalizations about ‘the way women are,’ estimates of what is appropriate for most women, no longer justify denying opportunity to women whose talent and capacity place them outside the average description,” Justice Ginsburg wrote. Twenty-two years later, she visited VMI, where 194 of the 1,700 cadets were women, and observed that, despite the school’s resistance to co-education, she had always believed the court’s ruling “would make VMI a better place.”

When she could not persuade a majority, as was often the case, because she was a liberal on a generally conservative court, Justice Ginsburg dissented, most powerfully in her prophetic protest against the court’s 2013 decision striking down a key provision of the Voting Rights Act. Given that historic 1965 law’s impact on Black enfranchisement, and the potential that states could revert to racially biased practices, the ruling was “like throwing away your umbrella in a rainstorm because you are not getting wet,” she wrote. Sometimes, as in the case of the court’s 2007 denial of a woman’s wage discrimination claim, Congress would correct the law in accordance with a Justice Ginsburg dissent. For the most part, though, the minority positions she took — in favor of gun control, campaign-finance regulation and wider access to contraception in spite of religious objections — define a progressive America that is yet to be realized.

Still, the justice has amply earned the legacy she wished for: “I would just like people to think of me as a judge who did the best she could with whatever limited talent I had,” Justice Ginsburg said at the University of California Hastings College of Law in 2011, “to keep our country true to what makes it a great nation and to make things a little better than they might have been if I hadn’t been there.” To consider Justice Ginsburg’s steadfast belief in social progress through persuasion,
and to recall that President Bill Clinton, upon nominating her for the court in 1993, praised her as a “force for consensus-building,” is to understand another way in which the United States has changed during Justice Ginsburg’s lifetime — not for the better. The White House’s current occupant values not persuasion or consensus but force and bombast, and he finds enablers in his fellow Republicans’ Senate majority.

Majority Leader Mitch McConnell (R-Ky.) refused even to consider President Barack Obama’s nominee to replace Justice Antonin Scalia upon that conservative icon’s sudden passing in February 2016. Purportedly, this was because a president and Senate of opposite parties should not change the court during a presidential election year, and should instead let the American people weigh in first. Now, Mr. McConnell implies the impending election is irrelevant, even though it is only six weeks away, because the same party controls both the Senate and White House. He promises a vote on President Trump’s nominee to replace Justice Ginsburg — possibly before the election or possibly during a lame-duck session, even if Mr. Trump loses and Democrats have won the Senate.

Such a grab for partisan advantage, on the basis of contrived and hypocritical logic, could undermine public confidence in the Supreme Court and further envenom already toxic relations between Republicans and Democrats on Capitol Hill, possibly provoking Democrats to pack the court, if they get the chance. The only thing in Mr. McConnell’s way is the willingness of Republican senators to stand for principle. Ruth Bader Ginsburg understood that a legitimate democratic system cannot be built on double standards; she spent her life fighting against them. A critical mass of GOP senators must find the courage to do the same thing now.

— September 19, 2020

Ruth Bader Ginsburg arrives for President Barack Obama’s address to a joint session of Congress in 2009
The Impact of a Supreme Court Justice: RBG

Ruth Bader Ginsburg was the second female justice of the Supreme Court. In 1993, nominated by President Bill Clinton, she joined Sandra Day O’Connor who had been nominated by President Ronald Reagan in 1981. She came with the experience of graduating first in her class at Columbia University Law School and being unable to get a job. She taught law, volunteered as an attorney for the ACLU and won arguments before the Supreme Court. In June 1980 President Jimmy Carter appointed her to the U.S. Court of Appeals for the District of Columbia Circuit where she served with Antonin Scalia.

“I would just like people to think of me as a judge who did the best she could with whatever limited talent I had,” Justice Ginsburg said at the University of California Hastings College of Law in 2011, “to keep our country true to what makes it a great nation and to make things a little better than they might have been if I hadn’t been there.”

An associate justice of the Supreme Court, she is known for the questions she asked during sessions, the decisions she wrote and the talks she gave. She is also admired for the relationship she had with her husband and family, her friendship with Scalia, her love of opera and music. A law student playfully referred to her as “The Notorious RBG” which she cheerfully, and with amazement, accepted.

ASSIGNMENT
Do some reading of Ginsburg’s writings for the Court (including dissenting opinions), of what other justices, legal reporters and others wrote about her, and of her speeches. After you have found the views she expressed on the following topics or what others surmised, add your thoughts on the topic. Be sure to provide the sources.

Use “On Voting Rights” (below) as an example of a source providing Justice Ginsburg’s view on that topic. You have five additional topics and one of your own choice to do.

1. On Voting Rights
Marc Elias, who is leading litigation efforts for Democrats, declined to speculate. He noted that in one of her final dissents, in a 5-to-4 case where conservative justices blocked a plan for extended absentee voting in Wisconsin’s April primary, Ginsburg wrote, “Ensuring an opportunity for the people of Wisconsin to exercise their votes should be our paramount concern.”

“Justice Ginsburg was a towering figure in so many areas of the law, but particularly in the area of voting rights,” Elias said. “She understood that the courts are there to protect the voters and that that’s the thing that matters more than anything else.” He added: “She understood that elections are first and foremost about ensuring voters’ ability to vote and that everything else comes after that. We will miss that voice, that clarity, on the court in the future.”


My View on the topic:
The Impact of a Supreme Court Justice: RBG  |  continued

2. On Equal Rights | Gender Discrimination

3. On Women’s Rights

4. On Being a Woman on the Supreme Court

5. On Culture (Including The Notorious RBG and opera)

6. On Her Friendship with Justice Antonin Scalia

7. On a topic of your choice (Select another area that was covered in the Supreme Court or a topic on which Ruth Bader Ginsburg expressed her point of view.)

Supreme Court Justice Ruth Bader Ginsburg laughs with her husband, Martin, as they listen to Justice Stephen G. Breyer speak at Columbia Law School in 2003. The occasion celebrated the 10th anniversary of her appointment to the Supreme Court.


“...If you can’t disagree ardently with your colleagues about some issues of law and yet personally still be friends, get another job, for Pete’s sake,” is how Scalia once described their lifetime appointments. “As annoyed as you might be about his zinging dissent, he’s so utterly charming, so amusing, so sometimes outrageous, you can’t help but say, ‘I’m glad that he’s my friend or he’s my colleague,’ ” Ginsburg said. Sometimes, she said, she had to pinch herself to not laugh in the courtroom when Scalia said something audacious.

Even in that VMI case, Ginsburg was grateful for how Scalia disagreed: giving her a copy of his dissent as soon as possible, so she could properly respond. “He absolutely ruined my weekend, but my opinion is ever so much better because of his stinging dissent,” she said. Whether or not it was how Scalia saw it, for Ginsburg their public friendship also made a statement about the court as an institution: that it was strengthened by respectful debate, that it could work no matter how polarized its members were.

Senate Republicans are unified enough that President Trump can expect to get his nominee, Amy Coney Barrett, on the Supreme Court in a matter of weeks.

Despite polling showing public opinion is against them moving forward, as well as their own opposition to filling a vacancy in an election year in 2016, Republicans see the opportunity to firm up the court’s conservative majority as too good to pass up. And there’s nothing in the Constitution or the rules of the Senate preventing them from doing so.

Getting enough support from enough Republican senators to move forward was the first and possibly biggest hurdle, but there’s still a process they have to go through to put Barrett on the court. As we saw with Trump’s 2018 nominee, Brett M. Kavanaugh, the unforeseen can slow that process. Here’s what we can expect now that Trump has selected his nominee.

Barrett will face about three days of hearings in the Senate Judiciary Committee. It’s controlled by Republicans who want this nominee to succeed, but she will also have to answer questions from Democrats on the committee who are frustrated this hearing is happening at all, including Democrats’ vice-presidential nominee, Kamala D. Harris (D-Calif.).

Senate Judiciary Chairman Lindsey O. Graham (R-S.C.) has sketched out a potential timeline that could get the whole nomination done days before the election, with the hearings starting Oct. 12 and lasting through Oct. 15. Democrats have some options for delaying the hearing by a few hours or a day or two, in the hopes

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**What’s next in the Supreme Court confirmation process for Amy Coney Barret**

**President**

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<tr>
<th>NOMINATION</th>
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<td>The president chooses a candidate who is well-qualified as well as someone who generally serves their political interests.</td>
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**Senate Judiciary Committee**

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<th>VETTING</th>
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<td>The committee checks the nominee’s credentials and background, including finances and past legal decisions.</td>
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<th>FIRST HEARING</th>
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<td>The committee questions the nominee’s qualifications. The nominee is given a chance to respond.</td>
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<th>COMMITTEE VOTE</th>
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<td>Even if a majority of the committee opposes the nominee, tradition calls for the panel to send the nomination to the full Senate with the recommendation that it be rejected.</td>
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**Full Senate**

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<th>DEBATE ON SENATE FLOOR</th>
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<td>Led by the chairman of the Judiciary Committee, the Senate debates the nomination.</td>
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<th>FINAL VOTE</th>
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<td>Simple 51-vote majority required.</td>
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**COMMITTEE BREAKDOWN**

- R: 12
- D: 10

*Includes two independents who caucus with the Democrats.

**BACK TO THE START**

A nominee may withdraw from consideration at any time, as Harriet Miers did in 2005.
they can drag this process out until after the election, when they have a chance to win back the Senate majority.

Any delays won’t change the fact that Republicans in the Judiciary Committee will probably have enough votes to send her nomination on for a full Senate vote. Once it’s on the Senate floor, Democrats can slow the process further by requiring 30 hours of extra debate on her nomination and delaying regular Senate order. But all that would also take up only a few hours or days at most.

Once the Senate does get to a final vote, just 50 Republican votes out of 53 Republican senators is enough to approve the nomination, since Vice President Pence can cast the tie-breaking vote. Only two Republican senators have expressed concerns about voting on a nominee now.

Democrats will spend the next few weeks trying to coax other Republicans to their side, but it’s a long shot given how quickly GOP senators fell in line.

The average Supreme Court confirmation process in recent decades has taken two to three months, but this one could be done in a month.

The rush comes with political risks. Democrats have seen a wave of initial enthusiasm in donations and polling since Republicans said they’d push forward with this.

If, for some reason, the nomination vote doesn’t happen until after the election, Republicans could be voting having just lost the White House and Senate majority, which are the very political mandates they relied on to fill this vacancy before an election.

(A new Senate majority wouldn’t take over until January, so Republicans could still push this nomination through in the lame-duck session.)

Democrats lowered the number of senators needed to force a vote on lower-court judges from 60 to 51 in 2013. Senate Republicans followed suit in 2017 and eliminated the filibuster on Supreme Court nominations, meaning that nominees would only need to clear a 50-vote threshold to be confirmed.

Many sitting justices were confirmed with bipartisan support, although the days of overwhelming consensus have passed. That will probably be the case with this, Trump’s third nomination to the Supreme Court. ■
John Adams was in the final weeks of his presidency when Chief Justice Oliver Ellsworth announced he was retiring from the Supreme Court for health reasons. It was December 1800. Adams had just lost a bitterly contested presidential election to his fellow Founder Thomas Jefferson. Jefferson was Adams’s vice president, but the two men were rivals with entirely different political views.

Federalists urged the president to find a replacement before Jefferson took office on March 4, 1801. In late January of 1801, Adams filled the vacancy by appointing Secretary of State John Marshall as the new chief justice. President-elect Jefferson, who despised Marshall, was furious. To open a seat on the high court, Jefferson soon pushed for the impeachment of Justice Samuel Chase, whom he also wasn’t crazy about.

More than two centuries later, the nation is consumed by another fight over the high court as President Trump rushes to fill the seat of Justice Ruth Bader Ginsburg, who died last week at 87. Democrats argue the Supreme Court choice should be left up to the president who is elected Nov. 3, but are powerless to stop the Republican-controlled Senate from confirming Trump’s nominee.

Adams had just moved into the newly completed White House, then known as the President’s House, when Ellsworth announced his retirement. After considering several candidates to replace him, Adams met in January of 1801 with Marshall to discuss possible choices. Suddenly, Adams declared, “I believe I must nominate you.”

Marshall later said he was “pleased as well as surprised,” and that he “bowed in silence” as he left. The Federalist-controlled Senate confirmed Marshall a week later.

The Federalists also voted to reduce the number of Supreme Court seats to five from six when the next vacancy occurred so Jefferson couldn’t appoint anyone. They pushed through the Judiciary Act of 1801 to add 16 circuit court judges and other judicial appointees, all with lifetime terms. The action was “conceived either in folly or in petulance and malice,” one Philadelphia newspaper said.

Adams had 19 days to appoint and commission the new judges. Marshall, who was still the acting secretary of state, was reportedly signing judicial commissions in his office at midnight before Jefferson’s inauguration the next day. Jefferson’s designated attorney general burst into the
room and declared that the new president had ordered him “to take possession of this office and its papers.”

Some historians doubt the story is true, but the Adams appointees did become known as the “midnight judges.”

Jefferson charged that the judiciary act was “a parasitical plant engrafted” on the “judicial body” as a last-ditch effort to thwart him. But, he wrote to James Madison, “It is difficult to undo what is done.”

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After Jefferson’s Democratic-Republicans took control of Congress, they wasted little time in undoing some of Adams’s actions. They passed the Judiciary Act of 1802, which repealed the Judiciary Act of 1801, eliminating the new judges. Then Jefferson saw an opportunity to grab a seat on the Supreme Court.

In 1803, Chase, while presiding over a circuit court case in Baltimore, blasted Jefferson’s party for repealing the 1801 judiciary law. He told a grand jury that America risked sinking into a “mobocracy, the worst form of all government.”

Jefferson and others considered the ill-tempered Chase, who was a signer of the Declaration of Independence, to be a dictatorial jurist who blatantly inserted his Federalist politics into his decisions. Jefferson wrote to a lawmaker, “Ought the seditious and official attack on the principles of our Constitution … to go unpunished?”

Virginia Rep. John Randolph led impeachment charges against Chase in early 1804, declaring he would wipe the floor with the obnoxious justice. In March of 1804, the House impeached Chase on charges of “arbitrary, oppressive and unjust” conduct.

The Senate trial began that November. Presiding was Vice President Aaron Burr, still facing possible murder charges for having recently killed Hamilton in a duel. Though Jefferson’s party held the majority, in early 1805 the Senate acquitted Chase.

Jefferson responded that “Impeachment is a farce which will not be tried again.” Chase is the only justice ever to be impeached.

Meantime, Jefferson won approval to restore the sixth seat to the high court and add a seventh. He ended up appointing three justices by the time he left office in 1809. By then, Marshall had become an imposing legal force.

In 1803, William Marbury, a justice of the peace who had lost his appointment when Congress canceled the new judgeships, petitioned the Supreme Court to force Secretary of State Madison to give him his commission. He didn’t get it. But Marshall used the case to write his landmark Marbury v. Madison opinion that established the principle of judicial review of laws passed by Congress.

Marshall went on to serve 34 years, the longest tenure of any chief justice. He died in 1835 at the age of 79.

Adams once wrote: “The proudest act of my life was the gift of John Marshall to the people of the United States.”

Ronald G. Shafer is a former editor at the Wall Street Journal and the author of “The Carnival Campaign: How The Rollicking 1840 Campaign of Tippecanoe and Tyler Too Changed Presidential Elections Forever.”
Modern Women Who Moved Society Forward

In the arts and sciences, mathematics and technology, women have made significant contributions. Some gained recognition immediately, others years later. Think about women you might nominate for contributions — advancing rights and challenging preconceptions, inventing and improving the simple tasks of daily life, fighting for safer conditions or charting new directions in their fields.

They are Malala, Rosa Parks, Ida B. Wells, Billie Jean King and Sally Ride. They are Georgia O’Keeffe, Amelia Earhart, Marian Anderson, Margaret Chase Smith and Dian Fossey. They are female leaders in countries around the globe and PTA members organizing food, clothing and book drives. They are very visible leaders and nearly invisible, workers behind the scenes.

Examples in Science
The book and movie Hidden Figures tells the story of NASA Black mathematicians Katherine Johnson, Dorothy Vaughan and Mary Jackson. The contributions of these human computers were virtually unknown, but made a difference for Project Mercury and other missions.

Examples in the Arts and Technology
Some actresses like Olivia de Havilland and Katherine Hepburn have a long career with roles that challenge perceptions of the role of women in society. Others, like Hedy Lamar have additional avenues to express their intelligence. Lamar, with composer George Anthell, developed a radio guidance system for Allied torpedoes. Years later they were inducted into the National Inventors Hall of Fame for application of their work in Bluetooth technology

1. Who Would You Nominate and Why?
Would it be someone like actress, star and recent producer of the film adaptation of the Enola Holmes Mysteries books, Millie Bobby Brown, the youngest person on Time magazine’s 2018 100 Most Influential People list? Or someone who is making a difference in your state or community during the pandemic? Why should this woman receive recognition?

2. Think About Yourself. Do you have a dream to move society forward? What first steps can you take?