

Making Sense of...Federal Elections and the Supreme Court

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Overview:

- According to the U.S. Constitution, the president is empowered to nominate justices of the Supreme Court, who must then be confirmed by the U.S. Senate. The Supreme Court of the United States provides a check on the legislative branch of government through the process of judicial review, where the Court can invalidate a statute for violating a section of the Constitution.
- After the President's nomination, the Senate votes to confirm the nominee. [A simple majority is needed for the confirmation to pass](#). There are currently 53 Republican Senators, 45 Democratic Senators, and 2 Independent Senators. In the event of a tie, the President of the Senate Vice President Mike Pence can cast a tie-breaking vote.
- With the passing of Justice Ruth Bader Ginsberg on September 18, 2020, there are many questions surrounding how this new vacancy on the Supreme Court impacts the 2020 presidential election and if a replacement will be confirmed before Election Day on November 3rd. The Supreme Court has [recently risen in profile as an issue driving voters to participate in upcoming federal elections in 2020](#).
- To date, President Donald Trump has appointed two Supreme Court Justices during his Presidency. Associate Justice Neil Gorsuch was confirmed in April 2017, followed by Associate Justice Brett Kavanaugh's confirmation in October 2018. Appointing a third Supreme Court Justice would potentially lead to six of the Court's nine justices having been appointed by a Republican president. No President has appointed more than two Supreme Court Justices since Ronald Reagan appointed four.

Readings:

- [How Supreme Court Vacancy Could Change Dynamics Of Presidential Election](#), NPR Interview with Mara Liasson
- [Why the Supreme Court Matters in the Presidential Election](#), JURIST Legal News & Commentary
- [Why filling a Supreme Court vacancy in an election year is so complicated](#), National Geographic
- [Frequency Asked Questions on the Judiciary Committee](#), Committee of the Judiciary
- [How the Supreme Court Could Affect Voting Rules on Election Day](#), The New York Times

Questions for discussion:

- With absentee and early voting already occurring in some states, should the Senate hold a vote on a new Supreme Court Justice before voters elect a new president?
- What are the implications of a Supreme Court that is viewed as being biased in a partisan nature?
- Because the president-elect also nominates court of appeals and district court judges, is the current partisan nature of appointments a positive or negative development for American democracy?
- The Supreme Court currently has 9 justices, and the total amount has fluctuated in the past. As the result of the current struggle over the future of the Court, [some political figures are arguing that the court should add more justices](#). Should the amount of justices on the Supreme Court be expanded?