

With the passing of Justice Ruth Bader Ginsburg on September 18, 2020, a vacancy now exists on the Supreme Court of the United States. Below is a primer on where the process stands at this moment.

Article II, Section 2, paragraph 2 of the United States Constitution states:

“[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law.”

What they are saying:

“The bottom line is we won the election, we have an obligation to do what’s right and act as quickly as possible.”

– President Donald Trump

“In the last midterm election before Justice Scalia’s death in 2016, Americans elected a Republican Senate majority because we pledged to check and balance the last days of a lame-duck president’s second term. . . Americans reelected our majority in 2016 and expanded it in 2018 because we pledged to work with President Trump and support his agenda, particularly his outstanding appointments to the federal judiciary. . . President Trump’s nominee will receive a vote on the floor of the United States Senate.”

– Senator Mitch McConnell

Nomination and confirmation timeline since 1981:

Nominee	To Replace	Nominated	Vote	Result & Date	Total Days	POTUS election?
President Donald Trump						
Brett Kavanaugh	Kennedy	07/10/18	50-48	Confirmed 10/6/18	88	NO
Neil Gorsuch	Scalia	1-Feb-17	54-45	Confirmed 4/7/17	65	NO
President Barack Obama						
Merrick Garland	Scalia	3/16/16	Not Considered			YES
Elena Kagan	Stevens	5/10/10	63-37	Confirmed 8/5/10	87	NO
Sonia Sotomayor	Souther	6/1/09	68-31	Confirmed 8/6/09	66	NO
President George W Bush						
Samuel Alito	O'Connor	11/10/05	58-42	Confirmed 1/31/06	82	NO
Harriet Miers	O'Connor	10/7/05	Withdrawn			
John Roberts (CJ)	Rehnquist	9/6/05	78-22	Confirmed 9/29/2005	62*	NO
John Roberts	O'Connor	7/29/05	Not Considered			
President Bill Clinton						
Stephen Breyer	Blackmun	5/17/94	87-9	Confirmed 7/29/94	73	NO
Ruth Bader Ginsburg	White	6/22/90	96-3	Confirmed 10/2/90	102	NO
President George H W Bush						
Clarence Thomas	Marshall	7/8/91	52-48	Confirmed 10/15/91	99	NO
David Souter	Brennan	7/25/90	90-9	Confirmed 10/2/90	69	NO
President Ronald Reagan						
Anthony Kennedy	Powell	10/30/87	97-0	Confirmed 2/3/88	96	NO
Robert Bork	Powell	7/7/87	42-58	Failed 10/23/87	108	NO
Antonin Scalia	Rehnquist	6/24/86	98-0	Confirmed 9/17/86	85	NO
William Rehnquist	Burger	6/20/86	65-33	Confirmed 9/17/86	89	NO
Sandra Day O'Connor	Stewart	8/19/81	99-0	Confirmed 9/21/81	33	NO

* Includes time associated with nomination to fill Justice O'Connor's seat and the Chief Justice position

Fall term hearing:

Case	Issue	Case	Issue
1. Carney v. Adams	1. Judicial selection in Delaware	17. Brownback v. King	17. Concerns the judgment bar of the Federal Tort Claims Act (FTCA).
2. Texas v. New Mexico	2. Interstate water dispute	18. California v. Texas	18. Concerns the Patient Protection and Affordable Care Act (ACA)
3. Rutledge v. Pharmaceutical Care Management Association	3. Arkansas state law preemption	19. Van Buren v. United States	19. Concerned the Computer Fraud and Abuse Act (CFAA).
4. Tanzin v. Tanvir	4. Money damages against federal employees	20. Edwards v. Vannoy	20. It concerns the U.S. Supreme Court’s 2020 decision in Ramos v. Louisiana.
5. Google LLC v. Oracle America Inc.	5. Copyright and Fair Use	21. Nestlé USA, Inc. v. Doe I	21. The case concerns the Alien Tort Statute.
6. Ford Motor Company v. Montana Eighth Judicial District Court	6. The “arise out of or relate to” requirement	22. CIC Services, LLC v. Internal Revenue Service	22. Concerns the Anti-Injunction Act, a federal law that bars lawsuits to stop the assessment or collection of taxes
7. United States v. Briggs	7. Statute of limitations for cases of rape in the Military	23. Department of Justice v. House Committee on the Judiciary	23. It concerns the Federal Rules of Criminal Procedure and whether an impeachment trial conducted by the U.S. Senate counts as a judicial proceeding for the purposes of disclosing secret grand jury information.
8. City of Chicago, Illinois v. Fulton	8. Bankruptcy Code’s automatic stay	24. Republic of Hungary v. Simon	24. The case concerns the doctrine of international comity and the expropriation exception of the Foreign Sovereign Immunities Act (FSIA).
9. Torres v. Madrid	9. Fourth Amendment	25. Federal Republic of Germany v. Philipp	25. The case concerns the doctrine of international comity and the expropriation exception of the Foreign Sovereign Immunities Act (FSIA).
10. Pereida v. Barr	10. Whether a criminal conviction bars a non citizen from applying for relief from removal	26. Facebook Inc. v. Duguid	26. It concerns the definition of an automated telephone dialling system in the Telephone Consumer Protection Act.
11. U.S. Fish and Wildlife Service v. Sierra Club	11. Whether inter-agency draft documents can be withheld under Exemption 5 of the Freedom of Information Act (FOIA).	27. Henry Schein Inc. v. Archer and White Sales Inc.	27. It concerns arbitration agreements.
12. Salinas v. United States Railroad Retirement Board	12. Whether a denial of a request to reopen a prior benefits determination is a “final decision” subject to judicial review.	28. Collins v. Mnuchin	28. The case concerns the extent of the president’s appointment and removal powers and control of independent federal agencies.
13. Jones v. Mississippi	13. Whether the 8th Amendment requires a finding that a juvenile is permanently incorrigible before imposing a sentence of life without parole.		
14. Borden v. United States	14. It concerns the “use of force” clause in the Armed Career Criminal Act.		
15. Fulton v. City of Philadelphia, Pennsylvania	15. Whether a government violates the First Amendment by conditioning a religious agency’s ability to participate in the foster care system on taking actions and making statements that directly contradict the agency’s religious beliefs		
16. Niz-Chavez v. Barr	16. Concerns the government’s ability to serve a notice of appear to a non-citizen, and the immigration stop-time rule, where a non-citizen’s accrual of continuous residence ends when that person is served with a notice to appear		