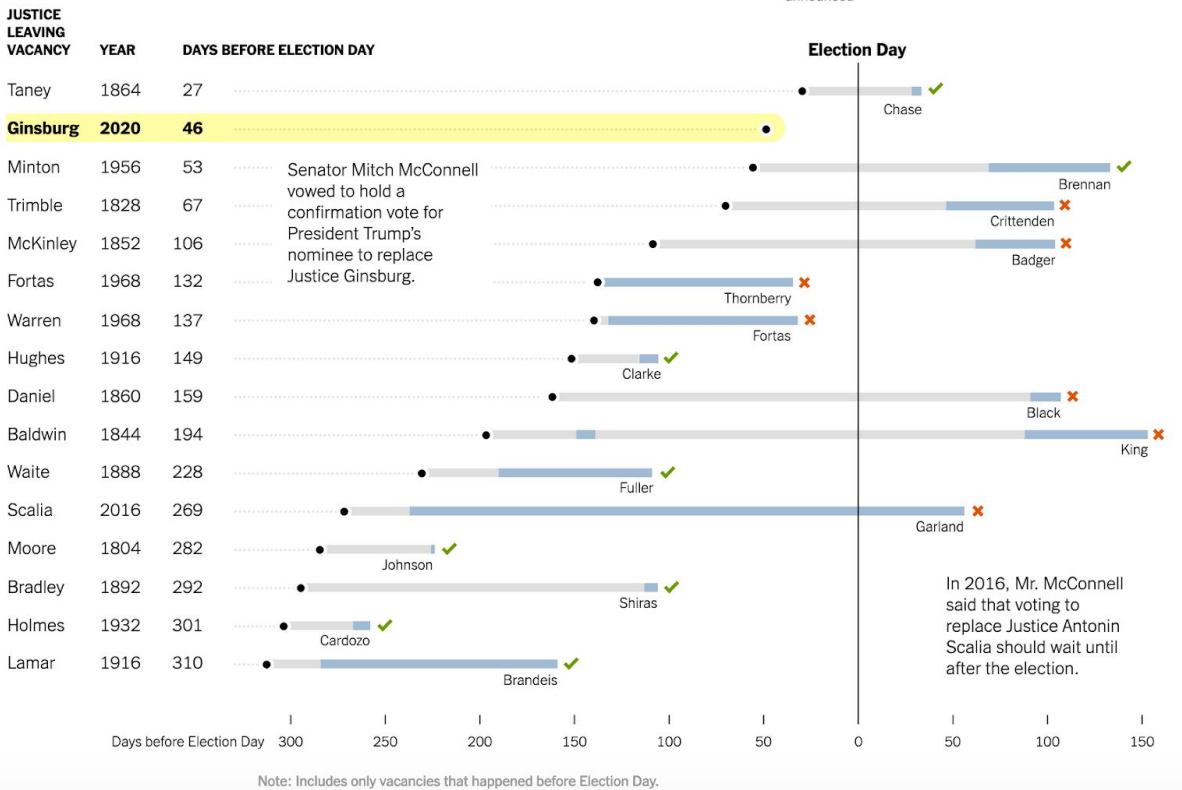


Supreme Court Vacancies in Election Years



Critical Analysis

1. Supreme Court Justice Ruth Bader Ginsburg passed away on Friday, 46 days before the November 3 election. Senate Leader Mitch McConnell and Donald Trump have said they will fill Ginsburg's vacancy before the upcoming presidential election. Has there ever been a Supreme Court vacancy this close to a presidential election?
2. [Article II of The U.S. Constitution](#) says the President "by and with the Advice and Consent of the Senate, shall appoint...Judges of the supreme Court" Does [Article II of the Constitution](#) say anything about *when* this can happen?
3. According to Senate rules [how many senators does it take to confirm a president's nominee for the Supreme Court?](#)
4. Are there currently [50 Republican Senators](#)?
5. Democrats have warned Republicans not to fill the vacant seat of Ruth Bader Ginsburg (*The Notorious R.B.G.*) before the November 3 election. Do the Democrats have enough Senators to stop the Republicans from filling the seat?
6. [Article III, Section 1](#) of the U.S. Constitution 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.” Does that say anything about the *number* of members of the Supreme Court?

7. The size of the Supreme Court is not fixed by the Constitution. It is determined by Congress. The original [Judiciary Act of 1789](#) set the number of justices at six. What branch then, gets to determine the size of the U.S. Supreme Court?
8. During Franklin D. Roosevelt’s Presidency, many of his New Deal plans were blocked by the U.S. Supreme Court. Why didn’t Roosevelt just fire the Justices who consistently voted against him?
9. Tired of losing in the Court, President Roosevelt proposed the Judicial Procedures Reform Bill of 1937 (known as the "court-packing plan") which gave the President power to appoint an additional Justice to the U.S. Supreme Court, up to a maximum of six. How would this “court packing” allow the president to more likely get what he wanted through the Supreme Court?
10. Although Senate Democrats don’t have the votes to stop a Trump nominee, some Democrats have warned that if the Republicans nominate a confirm a new Justice before the election and then if Democrats win the presidency and Senate in the election (*a big if*), the Supreme Court (which is majority Republican) will be enlarged. Why would Democrats want to enlarge the size of the Supreme Court under a Democratic president?
11. Could Democrats legally change the size of the court?
12. What do you think is going to happen with the Supreme Court vacancy and the election?

Learning Extension

[Read about public opinion and the fight over the Supreme Court](#)

Action Extension

These are the members of the Senate Judiciary Committee.

Republican members

- [Lindsey Graham \(SC\)](#) - Chairman
- [Chuck Grassley \(IA\)](#)
- [John Cornyn \(TX\)](#)
- [Michael S. Lee \(UT\)](#)
- [Ted Cruz \(TX\)](#)
- [Ben Sasse \(NE\)](#)
- [Joshua D. Hawley \(MO\)](#)
- [Thom Tillis \(NC\)](#)
- [Joni Ernst \(IA\)](#)

- [Mike Crapo \(ID\)](#)
- [John Kennedy \(LA\)](#)
- [Marsha Blackburn \(TN\)](#)

Democratic members

- [Dianne Feinstein \(CA\)](#) - Ranking Member
- [Patrick Leahy \(VT\)](#)
- [Dick Durbin \(IL\)](#)
- [Sheldon Whitehouse \(RI\)](#)
- [Amy Klobuchar \(MN\)](#)
- [Christopher A. Coons \(DE\)](#)
- [Richard Blumenthal \(CT\)](#)
- [Mazie Hirono \(HI\)](#)
- [Cory Booker \(NJ\)](#)
- [Kamala Harris \(CA\)](#)
- Contact the Senate Judiciary Committee member of your dreams and let them know what you think about filing the Ginsburg vacancy before the election.

Visual Extension