

# How Ruth Bader Ginsburg May Help Reelect Donald Trump and the Republican Senate

**Democrats at their most hateful and entitled will drive voters back to the GOP.**

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September 21, 2020

Predicting the outcome of any election or political fight is dicey this year. Pre-coronavirus pandemic President Donald Trump and the Republican Senate were looking good. The summer was rough for both. The fall still looked difficult for them.

Now Ruth Bader Ginsburg, a devoted liberal and progressive icon if not idol, likely will help turn those races around for the GOP. Who imagined that she might prove to be a secret weapon for those she most opposed, philosophically and judicially?!

Of course, it seems macabre to discuss the political impact of the death of someone whose body has barely cooled. This is Washington, however. Moreover, her nominal friends are doing the same.

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RBG was always a means to an end for the Left. Yes, they thought she was a wonderful person and justice. However, that was mainly because she voted left and filled a seat that otherwise might go to someone on the right. If she had voted against Obamacare, gay marriage, or, most horrifically, abortion — imagine a Ginsburg opinion overturning *Roe v. Wade!* — none of her past feminist victories would have mattered the slightest. She would have been denounced as a sellout and traitor and banished to outer liberal darkness. Because she remained reliably progressive, left-wing activists will give her a nice send-off, but they already are moving on to their primary objective, installing another justice whose vision of constitutional law is similar to Ginsburg's: making everything up along the way.

As this fight develops, it looks like an almost perfect set-up for beleaguered Republicans.

Expect a nominee this week. The White House and Senate GOP leadership have been planning for this moment. Even when the Senate was taking up impeachment (that seems like years, maybe decades ago!) there was talk on Capitol Hill as to how the Senate would handle a Supreme Court nomination if Ginsburg's health faltered.

Today it is important to have a “decent interval” so the process doesn't look overly choreographed. And it would make sense to leave the final decision open to account for the

overall political context at the moment of decision. For instance, the president is doing better than he did in 2016 among African-Americans and Hispanics. Choosing a black or Latina judge might offer additional political advantages than previously thought.

What will follow through November 3 will be a nomination campaign almost uniquely oriented to voters. The culmination of that effort will be Americans going to the polls and casting ballots for president and senators, not senators casting their votes on the nominee. After November 3 will an anti-climax, the Senate deciding on Trump's high court choice.

What is to come?

### **The president will nominate a woman.**

This decision, obviously, is political, not ideological. His and the party's greatest loss of support since 2016 has been among suburban women. Their defection is an important reason Democrats gained control of the House. Selecting just such a person will give Trump and senators an opportunity to highlight the important role of women in the party and country.

Indeed, this is why the nomination and hearings are more important than the vote. They provide the GOP with an opportunity to present a relentlessly positive message: the nominee, her accomplishments, and her family. The focus should not be on judicial philosophy — conservatives and libertarians who care most about that issue need little coaching — but on her, how she is someone who could live next door to every one of those disenchanting suburban moms.

Although possession of a solid jurisprudential foundation is essential, the candidate who can deliver the most relevant political message at the moment is likely to be chosen. Federal appellate judge Amy Coney Barrett looks to have the pole position, with seven kids and Catholic faith, the latter already attacked by Sen. Dianne Feinstein during Barrett's earlier confirmation hearing. However, there are other fine possibilities. Barbara Lagoa, a Hispanic Catholic, also serves on the federal Court of Appeals. She enjoys broader judicial experience, having served on the federal district court and state supreme court. Stephanie Davis is an African-American and a federal district court judge from Michigan. That's a longer jump to the Supreme Court, but Michigan is a key state.

There are other potential nominees, such as Allison Jones Rushing, who on her way to confirmation to the federal appellate bench was attacked for having worked for the Alliance Defending Freedom, deemed a "hate" group by the Southern Poverty Law Center, which has raised millions by spewing hatred at those with whom it disagrees. Obviously, there is a wealth of talent for the president to choose from, people who would offer a positive campaign message as well as fine judicial promise.

### **Democratic arguments for not filling the seat are partisan, self-serving, and hypocritical.**

Senate Minority Leader Chuck Schumer sought to score political points by repeating McConnell's argument for not considering Barack Obama's 2016 nominee after the death of Antonin Scalia. That was cute, but the Republican leader could quote Schumer's and every other Democrat's demand to fill the vacancy at the same time. Democrats determined to prevent consideration of Ginsburg's replacement are doing so for the simplest, most partisan reason: they want to fill the seat. There is no principle involved, only political advantage.

And McConnell has the better, if not entirely convincing, argument as to why it is proper to fill the vacancy now. With the president and Senate of the same party and working together, there is no partisan difference to work out. In 2016 the president and Senate were at odds, making it much more difficult to come to agreement. That's why the previous Democratic Senate Leader, Harry Reid, had eliminated the filibuster for district and appellate court nominees. Rather than compromise partisan differences, he decided to crush them. McConnell & Co. have returned the favor over the last four years. Democrats set the precedent now being used by the GOP.

Still, polls suggest that a majority of people do not favor voting on a Supreme Court nomination right before the election. However, procedural battles normally matter much more to political insiders than the public. Moreover, an attractive, well-qualified, sympathetic nominee would dispel such concerns. A voter might retaliate against the majority when casting his or her ballot for ramming through a dubious nominee. But the minority will be at political risk if it is obstructing a well-qualified choice with whom voters can identify.

Relying on this procedural line of attack, as well as Ginsburg's alleged last wish that Trump not choose her successor, reflects subtle desperation. Contrary to Democratic expectations the Kavanaugh contretemps appeared to help the GOP, including Senate candidates. Party professionals, in contrast to left-wing activists, likely realize the difficulty posed by Barrett, Lagoa, Davis, Rushing, or someone similar. The Democrats' best hope is to convince the GOP to forgo the nomination fight.

Republicans should shamelessly push identity politics to support the nominee. As the Democratic Party has moved leftward, it has grown increasingly encumbered by the demand for political correctness in all things: who uses what bathroom, who is an "authentic" representative of which grievance group, who most eloquently states pious inanities while accusing everyone except the woke remnant of being irrevocable racists, sexists, and so much more.

So Republicans should put the court nominee forth as whose identities are shared by most Americans, such as religious faith, family commitment, and sanctity of life. The point is not to exclude but include — those who feel increasingly uncomfortable with woke crusades, cancel culture, coercive political correctness, and "mostly peaceful" protests. The Left cannot help but be enraged by a woman who does not meet its political standards for genuine, bona fide women, whether Hispanic, African-American, or other. The Left either must acquiesce to the positive description of the nominee or go on the attack. If the latter, it will disparage important voting constituencies, some of which only recently and reluctantly voted Democratic.

**Highlight Democratic plans to advance their ideological agenda by destroying republican guardrails on American democracy.**

The Founders' conception was of a republic, not a pure democracy. And Democrats, like Republicans, periodically benefited from the resulting limitations on majoritarian control.

America's mix of constitutional limits and practical restraints has remained effective even during the Trump era, despite his sometimes bizarre and confusing fulminations and his critics' many prophecies of doom. Although holding the White House and both houses of Congress in 2017 and 2018, the Republican Party did not irrevocably transform American government. The president did not follow up most of his misguided mutterings. There was no rampaging GOP

congressional majority. Restraints on majoritarianism did not disappear. The executive often was checked by the courts, now so maligned by the Left.

The hard-Left continues to push its agenda, however, with the Ginsburg seat as the latest excuse. End the filibuster. Pack the court — add two to four members to restore the “stolen” seats of Scalia and Ginsburg or even ensure a progressive majority. Sen. Tim Kaine complained, “If they show that they’re unwilling to respect precedent, rules and history, then they can’t feign surprise when others talk about using a statutory option that we have that’s fully constitutional in our availability.” Even before Ginsburg’s death the Democratic National Committee opined that the GOP “packed our federal courts with unqualified, partisan judges who consistently rule for corporations, the wealthy, and Republican interests.”

This is self-serving gibberish. Republicans followed the rules. They elected a president. They elected a majority of senators. They filled judicial vacancies as the latter occurred. In U.S. history as it actually occurred, presidents usually tried to fill election-year court vacancies. Chief executives didn’t always succeed, but there was nothing to prevent them from trying. The Democrats’ complaint really is that they lost the Senate — after setting a new precedent for future Supreme Court nominations by killing filibusters for lower federal court appointments. Oops! For this extraordinarily bad judgment, they blame Republicans.

However, Ginsburg is merely the latest excuse for a major left-wing power grab. Brian Fallon, a former aide to Schumer and the Hillary Clinton presidential campaign, founded Demand Justice, which has been championing court-packing. Stated Fallon, “I think we have sufficient grounds to pursue structural reform just based on the events of 2016.” As for Ginsburg, he added, “If Republicans compound that sin with an egregious violation of norms in a seat that was held by a liberal justice, I think that we will gain new allies very quickly.”

But court-packing might be only the start. For instance, Schumer declared, “Let me be clear: if Leader McConnell and Senate Republicans move forward with this, then nothing is off the table for next year.” He added, “Nothing is off the table.”

Again, before Ginsburg’s death, there were proposals to impeach Kavanaugh and even Gorsuch, though the former is the main target of Demand Justice and others. Beyond proposals narrowly targeted to the judiciary, some left-wing activists propose bringing in Puerto Rico and Washington, D.C., as states. The objective is a permanent majority.

Although Democrats are offering to shelve their threatened retaliation if the GOP abandons plans to fill Ginsburg’s seat, there is no way to enforce such a promise. Most senators have made no such pledge. Moreover, the activists desperate to remake America and the world have not agreed to such a compromise. Far more likely, if Democrats have the votes to change rules and institutions to their advantage, they will do so. Remember which party first removed the filibuster for judicial nominations.

Moreover, many on the left have complained that the very structure of the U.S. government, especially the Electoral College and Senate, discriminates against progressive revolutionaries. (Never mind the fact that since 1994 the GOP has been competitive in the House as well.) Trusting in Democratic restraint would be a fool’s errand. Republicans should make clear the price of defeat to anyone struggling with how to vote in the November contest.

**Republicans should use time until the election to sell the nomination to the public.**

The confirmation vote should be set for a lame-duck session shortly after November 3, and treated almost as a separate project. Of course, the two are intimately connected, but if the former is handled well, the second should fall into place. Indeed, if the nomination fight helps reelect the president and Republican-controlled Senate, the second will be perfunctory. The vote could even be put off, deflating claims that McConnell was rushing the vote and abusing the process.

As part of this effort, vulnerable GOP senators should be left free to say whatever they believe is necessary about the issue before the election. Perhaps Susan Collins' expressed opposition to a vote so close to November 3 will help her survive, though the steady disappearance of old, moderate New England Republicans suggests long odds. More broadly, a successful sales job and resulting victories would cover a multitude of sins, to paraphrase Scripture. A winning effort could honor the preferences of those reluctant to vote even in a lame-duck session. A losing effort would leave little reason, for the caucus and individual senators, not to move ahead and decide on confirmation.

Just when one assumes 2020 cannot grow more complicated, that old Chinese curse about living in "interesting times" makes another appearance. Ginsburg's death has made politics ever so much more "interesting."

Ruth Bader Ginsburg was an admirable figure, both in her private life and public endeavors. Those qualities should not be obscured amid the political scramble created by her death. Nevertheless, for the Left, the courts are now as political as the other branches. Judges are essentially super-legislators, tasked with voting on how the law should be — always in a progressive direction, of course. Thus, the frenzied effort to seize full control of an institution that long has favored the worst liberal nostrums about expanded state power and control.

Republicans should unashamedly handle the nomination as the premier political issue that it is. The upcoming fight on both sides is likely to be no holds barred. Therefore, they should be thankful that Ginsburg appears to have left them a solid hand to play. The result will affect Americans' lives well into the future.

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