



GOP fractured over filling Supreme Court vacancies in 2020

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October 11, 2018

Early lines of division are opening up among top Senate Republicans over a potential 2020 Supreme Court fight.

Days after the Senate confirmed Brett Kavanaugh to the court, key GOP lawmakers are giving different answers over whether they'd fill a Supreme Court seat if there is an opening in 2020, the next presidential election year.

Senate Majority Leader Mitch McConnell (R-Ky.) refused to rule out taking up a nomination in 2020, even though Republicans blocked Merrick Garland, President Obama's nominee, from getting a hearing or a vote in the presidential election year of 2016.

McConnell, suggesting 2020 could be different, pointed out that at the time the Senate and White House were controlled by different parties.

"You have to go back to 1880s to find the last time a Senate controlled by a party different from the president filled a vacancy on the Supreme Court that was created in the middle of a presidential election year," McConnell said on Fox News. "That's been the history."

Asked directly if he would allow a nominee to be confirmed in 2020, McConnell sidestepped the question, saying senators would wait and "see if there's a vacancy."

He reiterated his point to reporters in Louisville, Ky., on Monday and during an interview with the Associated Press Wednesday that was streamed live on Facebook.

Two other Republicans took starkly different views from McConnell.

Senate Judiciary Committee Chairman Chuck Grassley (R-Iowa), fresh off the brutal Kavanaugh fight, told Fox News that if he is still committee chairman and there is a Supreme Court opening in 2020, the panel "won't take it up."

"Because I pledged that in 2016," Grassley told Fox News's Martha MacCallum. "That's a decision I made a long time ago."

Grassley hasn't said if he will remain chairman of the Judiciary Committee next year if Republicans keep control of the Senate. He could take over the Finance Committee, where current chairman Sen. Orrin Hatch (R-Utah) is retiring after 2018.

Sen. Lindsey Graham (R-S.C.), who attacked Judiciary Democrats with vitriol during Kavanaugh's final hearing, also said he would support putting off a Supreme Court confirmation if an opening occurs during the presidential primary season.

"If an opening comes in the last year of President Trump's term, and the primary process has started, we'll wait until the next election," Graham, who would be in line to serve as Judiciary's chairman if Grassley steps aside and the GOP keeps its majority, said at a festival hosted by The Atlantic.

Graham reiterated to CNN on Tuesday that he would be "inclined" once the 2020 primary season starts to delay a Supreme Court nominee until the next presidency.

A 2016 analysis of Supreme Court confirmations done by Josh Blackman, an adjunct scholar at the Cato Institute and law professor at South Texas College of Law Houston, found that eight justices had been confirmed in a presidential election year from a vacancy that opened up during that same year, the last occurring in 1932.

Only two were confirmed by a Senate controlled by an opposing political party from the president, the last taking place in 1888 when a Republican Senate confirmed Melville Fuller, who was nominated by Democratic President Grover Cleveland.

Graham and Grassley would likely face intense pressure from McConnell and other conservatives to fill an opening to the court in 2020 if there is one. The conservative movement sees the appointments made by Trump and a GOP-controlled Senate as one of its greatest victories.

With the confirmations of Trump nominees Neil Gorsuch and Kavanaugh, conservatives believe they have shifted the high court to the right, potentially for decades to come.

Given the fact that three Supreme Court justices are at least 70 years old, it's entirely possible Trump could get a chance at a third nomination. Axios reported last year that Trump privately predicted he would be able to make four appointments to the court.

Hatch sided with McConnell in the internal GOP debate, saying he believed Republicans would have to fill a vacancy, even if it occurred during the presidential election year.

"I think we have to if we can. I'm for moving ahead no matter what," Hatch said.

Asked if it would appear "hypocritical" for Republicans to take up a nominee from Trump after they refused to move Garland's nomination, Hatch added that, "people would try to make that point but I'm not sure it works."

Sen. Mike Lee (R-Utah) told Fox News Radio that the Constitution didn't forbid them from confirming a Supreme Court nominee during an election year.

"I agree with Mitch McConnell's statement that this was a circumstance in which you had a Senate controlled by one party and a White House controlled by the other party. There's nothing written into the Constitution about that," said Lee, a member of the Judiciary Committee.

Sen. Lisa Murkowski (R-Alaska), the only Republican to oppose Kavanaugh, began shaking her head when asked about a potential 2020 Supreme Court fight. She added that she didn't know how to respond and that it was a "weird question."

GOP Sen. Jeff Flake (Ariz.), who is retiring after 2018, joked that he would leave the decision up to his colleagues. And Sen. John Cornyn (R-Texas), the No. 2 Senate Republican, quipped: "Did somebody retire?"

"(McConnell) didn't speak to what would happen if they were the same party. But, obviously we don't have a Supreme Court nomination, so I'm not going to speculate or answer a hypothetical. ... When there's a vacancy I would be happy to talk," he said.

Sen. Thom Tillis (R-N.C.), a member of the Judiciary Committee, added that questions about a potential 2020 vacancy were "hypothetical" but indicated senators should give weight to Graham and Grassley's positions.

"I've heard from the current chair and the member who would be chair that they wouldn't take it up," Tillis said, referring to Grassley and Graham. "If we're really trying to restore some of the integrity of the Senate Judiciary Committee, I think there is something to be said to listening to ... the chair and the potential chair."

Democrats, for their part, aren't surprised that McConnell might have a change in heart if the opportunity arises to appoint a justice in 2020.

"He's prepared to break or change any rule even those that he swore he would uphold if it means getting another Republican on the federal court," said Sen. Dick Durbin (D-Ill.).

With a laugh, he said that he was "not at all surprised" by McConnell's rhetoric.