

SUPREME COURT BATTLE; Court may tilt right for decades; New jurist could mean end to legal abortion, Obamacare and more despite election result.

Los Angeles Times

September 20, 2020 Sunday

Final Edition

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Section: MAIN NEWS; National Desk; Part A; Pg. 1

Length: 1156 words

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Dateline: WASHINGTON

Body

The death of liberal Justice Ruth Bader Ginsburg could allow legal conservatives to take full control of the Supreme Court for a decade or more, imposing a historic shift to the right with vast implications for U.S. jurisprudence and society at large.

A conservative court could use its majority to overturn *Roe vs. Wade*, which guarantees a woman's right to abortion, and strike down Obamacare and its promise of health insurance for millions, including those with preexisting conditions.

A more conservative court would be likely to strike down affirmative action laws and many current gun control regulations, possibly including laws in California that limit the carrying of firearms in public or restrict the sale of semiautomatic rifles.

After decades of frequent 5-4 decisions that kept a relative balance in major court rulings, a decisive 6-3 conservative majority also could stand in the way of future progressive legislation from Congress.

President Trump said Saturday he expects to nominate a new justice in the coming week to succeed Ginsburg and he indicated it would be another woman. He predicted the necessary Senate hearings and confirmation vote will go "very quickly," although he did not offer a timeline.

If Democrats score big wins in November and capture the Senate, they are likely to press ahead in Congress with proposals to expand social programs and put new taxes and regulation on corporations and the wealthy.

But even if passed into law, those measures will face legal challenges from the right.

In the past, it was often said the future of the Supreme Court depended on the outcome of the presidential election. The winner of White House would have four years to fill vacant seats on the court.

But in this presidential election year, conservatives could win a lock on the high court for a generation even if Trump is soundly defeated by Democratic nominee Joe Biden.

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The outcome will turn on whether Senate Republicans will march in line behind Majority Leader Mitch McConnell (R-Ky.) to confirm a conservative jurist by the end of the year. That's far from certain, but Trump is hoping to make it a reality.

The high court now has five Republican appointees who lean right, and none appears likely to retire anytime soon. The youngest, Justice Neil M. Gorsuch, is 53, and the eldest, Justice Clarence Thomas, is 72.

Liberals breathed easier this summer when Chief Justice John G. Roberts Jr., who is 65, joined with Ginsburg and the court's other liberals to strike down a Louisiana abortion law, to block Trump's repeal of the Deferred Action for Childhood Arrivals program for young immigrants known as "Dreamers," and to uphold rights for LGBTQ employees.

In doing so, the chief justice sent the message that he wanted to steer the court on a middle course and avoid a sharp turn to the right.

That meant the retirement of moderate Justice Anthony M. Kennedy in July 2018, and the Senate confirmation three months later of the more conservative Justice Brett M. Kavanaugh, 55, have had little impact on the court's direction so far.

But if Trump can replace the liberal Ginsburg with a solidly conservative jurist in her 40s, the court would have five reliably conservative votes without the chief justice.

That would cast doubt on the future of Roe vs. Wade, the abortion ruling that has been a target of the conservative legal movement since the 1980s.

At least half a dozen Republican-led states have adopted laws to ban some or nearly all abortions, hoping to force the more conservative Supreme Court to reconsider its precedent.

So far those laws have been struck down or put on hold. But that could change at any time.

Trump has also put dozens of new conservatives on U.S. appeals courts, including in the South and the Midwest. If one of those courts were to uphold a state abortion ban, it would send the issue to the Supreme Court and force the justices to decide whether to uphold or strike down the right to abortion.

Ginsburg's death has also raised new doubts about the future of the Affordable Care Act, or Obamacare, the most far-reaching social legislation in a generation. The high court's conservatives fell one vote short in 2012 of striking down the law.

On Nov. 10, a week after the election, the justices are scheduled to hear a constitutional challenge to the healthcare law that was widely seen as a long shot.

A conservative judge in Texas and a 2-1 appeals court ruling in New Orleans adopted the notion that the entire law may be voided as unconstitutional because Congress in 2017 voted to eliminate the penalty for not having insurance.

This was seen as a victory by conservatives, including Trump, because it effectively ended the much disputed "mandate" to have insurance.

The challengers, including Trump's lawyers, argue that the mandate was crucial to the law and that all of it -- including the protections for people with preexisting conditions -- must fall with it.

The case is called California vs. Texas because California Atty. Gen. Xavier Becerra is leading the blue states' defense of the law. The Trump administration has taken the side of the red-state challengers led by Texas.

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Until Friday, that challenge looked highly doubtful, since Chief Justice Roberts and the four liberal justices had voted twice to uphold the law.

But Ginsburg's death could lead to a 4-4 split, which would have the effect of upholding the lower-court ruling.

A more conservative court likely would also target some gun control laws.

For the last decade, the high court has said that Americans have a right to keep a gun at home for self-defense, but the justices have refused to go further and hear 2nd Amendment challenges to laws in California and elsewhere that limit the carrying of firearms in public or restrict the sale of semiautomatic rifles.

Four of the conservative justices have signaled they would like to hear challenges to those laws, but Roberts has balked.

A strengthened conservative court could also put in jeopardy affirmative action policies in colleges and universities nationwide. This comes as California voters weigh Proposition 16 and decide whether to repeal the state's 1996 ban on affirmative action.

Roberts has long believed the government may not use race as a factor for awarding benefits or making other decisions, including the drawing of electoral districts. He has not won a majority for that view, however.

In 2016, shortly after Justice Antonin Scalia died, Kennedy joined with the liberal justices to uphold an affirmative action policy at the University of Texas.

That defeat did not end the battle. The same challengers who sued Texas launched a lawsuit against Harvard University alleging its admissions office regularly discriminates against Asian American applicants.

Regardless of the outcome in the federal courts in Boston, that case will be appealed to the Supreme Court, giving the court's conservatives another opportunity to strike down affirmative action.

Graphic

PHOTO: CONSERVATIVE Chief Justice John G. Roberts Jr., front left, has voted with liberal colleagues on major laws. A Trump jurist could give reliably conservative justices a deciding vote, threatening abortion rights and more. PHOTOGRAPHER:Matt McClain Washington Post

Load-Date: September 20, 2020