

Overview

The Supreme Court of the United States is the nation's highest court. It ensures the American people the promise of equal justice under the law and "functions as a guardian and interpreter of the Constitution." The Supreme Court consists of the Chief Justice of the United States and a set number of Associate Justices. The Constitution states that the President of the United States nominates a Justice to serve on the Court and the Senate must approve the appointment.

With the recent retirement of Justice Stephen Breyer, President Biden nominated Ketanji Brown Jackson to serve on the Supreme Court. Once again the vacancy has brought about debate about the nomination timeline and how many justices should serve on the court.

The Size of the Supreme Court

Article III of the Constitution states that Congress has the ability to set the size of the Supreme Court. The size of the court changed many times during the first 100 years of the United States. When President George Washington signed the Judiciary Act of 1789 into law, he set the number of Supreme Court Justices at six. This number corresponded with three geographical regions of the U.S. because the justices also presided over the federal circuit courts. Before he left office, John Adams passed the Judiciary Act of 1801 which decreased the number of Supreme Court Justices from six to five. This was an attempt to not allow his political rival, the newly elected Thomas Jefferson, to nominate a new justice during his time in office. Once in office, Jefferson repealed the Act and reinstated the number of justices at six.

By the start of the Civil War, the number of Supreme Court Justices had increased to nine in order to cover the new circuit courts in the Western part of the United States. In an attempt to cement an anti-slavery majority on the Court, Abraham Lincoln added a 10th justice in 1863. But in 1866, Congress passed legislation to cut the number of justices to seven in order to limit President Johnson's power during Reconstruction. The last time Congress changed the number of Supreme Court Justices was in 1869. Congressional Republicans that supported Ulysses S. Grant increased the number of justices from seven to nine justices, with six required at a sitting to form a quorum. Since 1869, the number of justices on the court has remained at nine. In 1933, Franklin D. Roosevelt tried and failed to expand the court to 15 justices when the court ruled against some parts of his 100-day recovery program.

Nomination and Confirmation

When a vacancy occurs on the Supreme Court, the President is given authority under the Constitution to nominate a candidate. Then, the vetting process and

Center Forward Basics

Center Forward brings together members of Congress, not-for-profits, academic experts, trade associations, corporations and unions to find common ground. Our mission: to give centrist allies the information they need to craft common sense solutions, and provide those allies the support they need to turn those ideas into results.

In order to meet our challenges we need to put aside the partisan bickering that has gridlocked Washington and come together to find common sense solutions.

For more information, please visit www.center-forward.org

Key Facts

- Nine Justices make up the current Supreme Court:
 - 1 Chief Justice:
 - Honorable John G. Roberts serves as the 17th Chief Justice of the United States.
 - 8 Associate Justices:
 - There have been 102 Associate Justices in the Court's history.
- A Term of the Supreme Court begins on the first Monday in October. Usually Court sessions continue until late June or early July.
 - The Term is divided between "sittings," when the Justices hear cases and deliver opinions, and intervening "recesses," when they consider the business before the Court and write opinions.

Senate confirmation hearings begin.

Supreme Court nominations typically take around 70 days to move through the Senate. First, the nominee must answer an elaborate questionnaire. Some of the questions include: every client a nominee has ever represented, sources of income, speaking fees, travel destinations, interviews with the news media, and writings. Also, the F.B.I. will begin a background check, and the Judiciary Committee will start its own background investigation. During this time, the nominee will begin calling and meeting with Senators. Next, the Judiciary Committee holds a confirmation hearing where the nominee will undergo questioning from the Senators. The hearings have typically lasted for three or four days. If the Judiciary Committee approves the nominee, then the entire Senate will vote on the nominee, where only a simple majority vote is required.

In the Recent Past

When Justice Antonin Scalia died in February of 2016, Senator McConnell refused to consider then-President Barack Obama's nomination because it was too close to a presidential election. Many Senators argued that the same precedent should have been upheld after the passing of Justice Ruth Bader Ginsburg, but Republicans argued that this Supreme Court vacancy was different because the Senate and the President were held by the same party. While the Supreme Court nomination process has taken on average around 70 days, the Senate confirmed President Trump's pick, Justice Amy Coney Barrett, just 30 days after she was nominated and a week before the 2020 election. Most observers expect President Biden's Supreme Court pick to be confirmed before the 2022 midterm elections.

Many Democrats support a plan to expand the size of the Supreme Court. For example, during his presidential run, Pete Buttigieg suggested expanding the Supreme Court to as many as 15 members: five Republicans, five Democrats, and five non-political members. Other court reform advocates have called for term limits to be placed on the Supreme Court. In March of 2019, Senator Marco Rubio introduced a constitutional amendment that would limit the number of Justices on the Supreme Court to nine. After he was elected president, President Biden created The Presidential Commission on the Supreme Court. In December 2021, the commission stated that Congress does have the power to expand the court and a constitutional amendment is likely necessary to enact term limits. The size of the Supreme Court has shifted throughout the history of the United States and could change again.

Links to Other Resources

- AP News - [AP Explains: What's next with the Supreme Court vacancy?](#)
- CNN - [The Supreme Court nomination process, explained](#)
- CNN - [How a rushed confirmation could push Democrats to reshape the Supreme Court](#)
- History - [Why Do 9 Justices Serve on the Supreme Court?](#)
- Library of Congress - [Judiciary Act of 1789](#)
- The New York Times - [How a Supreme Court Justice Is \(Usually\) Appointed](#)
- National Constitution Center - [Packing the Supreme Court explained](#)
- NPR - [What we know about Biden's Supreme Court opening](#)
- NPR - [Biden's Supreme Court commission steers clear of controversial issues in draft report](#)
- The Supreme Court of the United States - [About the Court](#)