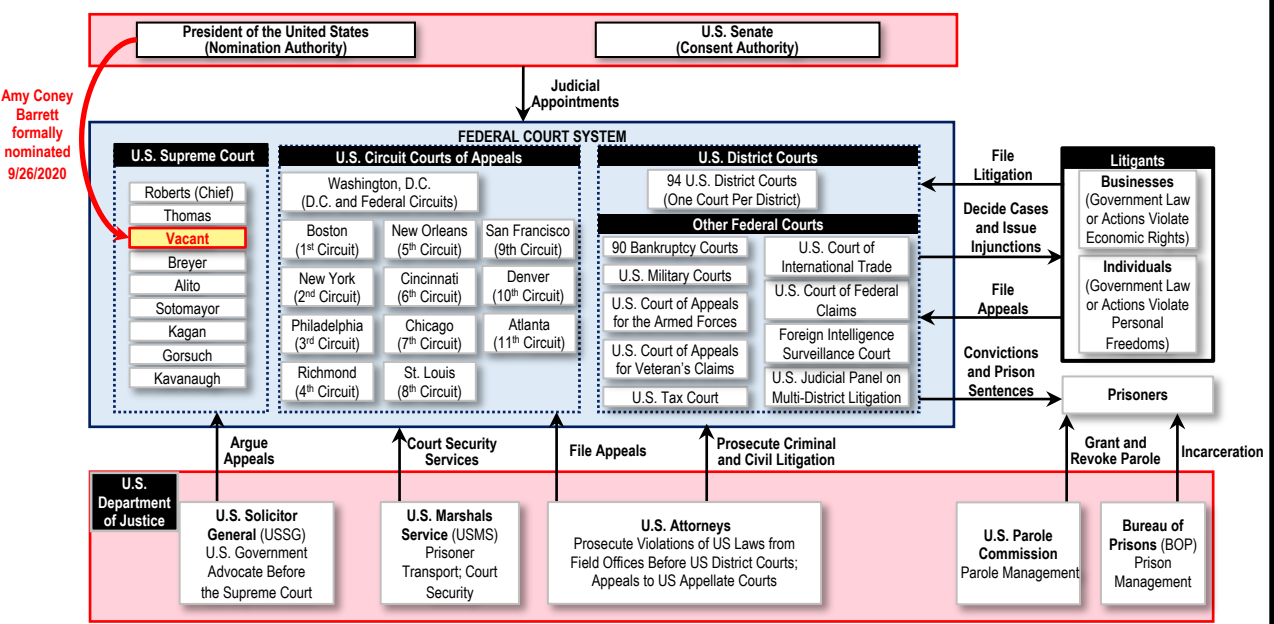




## Federal Judicial Branch

### Federal Judiciary Ecosystem



**U.S. CONSTITUTION (ARTICLE III)**  
"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. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office." (The Appointments Clause)

**JUDICIARY: LIFETIME TENURE**  
There are nearly 870 federal court judges. Each judge is appointed for life and may only be removed for cause.

**JUDICIAL APPOINTMENTS**  
Trump has appointed more life-tenured judges (187) than all but one predecessor (Carter) and more court of appeals judges (50) than any predecessor. In nearly four years, he has filled 21% of all federal judgeships (Obama filled 14%; Clinton filled 22%; and Carter filled 29%). Currently, there are 83 vacancies in the federal judiciary, including one on the nine-person U.S. Supreme Court.

**JURISDICTION**  
The judicial branch is responsible for interpreting the U.S. Constitution and federal law. The Supreme Court hears appeals from federal courts of appeals (and federal district courts, in limited instances), special federal courts, and the highest state courts. The Supreme Court typically hears 100-150 cases per year, often involving the constitutionality of executive orders and laws and regulations adopted by Congress, state and federal regulatory agencies, and state legislatures.

## Constitutional Interpretation

### Three Approaches

**INFRINGEMENT OF BILL OF RIGHTS**  
The Constitution is the supreme law of the U.S. It has been amended 27 times. The first ten amendments (referred to as the Bill of Rights) guarantee certain fundamental rights and protect these rights from government interference. Cases involving an infringement on these rights and the Equal Protection Clause of the 14th Amendment are often the most closely followed in the political arena and the country at large. Among the most widely recognized of these rights are:

- 1st Amendment:** Freedoms of speech, the press, religion (and no government-sponsored religion), and to assemble
- 2nd Amendment:** Right to bear arms
- 4th Amendment:** No search and seizure without probable cause
- 5th and 14th Amendments:** Before a government can take a person's life, liberty, or property, it must follow due process (i.e., clear rules, notice and a hearing)
- 14th Amendment:** Federal and state governments cannot deny any person equal protection of the law. This has been held to mean governments cannot enact laws that treat "similarly situated" persons differently without a sufficient justification (unless the person is part of a suspect class—race, national origin and citizenship—in which case the government's reasoning must be exceptionally important.)

**THREE APPROACHES TO CONSTITUTIONAL INTERPRETATION**  
There are generally three schools of thought on how to apply and interpret the U.S. Constitution to circumstances that didn't exist when it was written over 230 years ago:

- Originalism:** The Constitution was written exactly as intended and should be interpreted as written. A justice should consult dictionaries and the record of the Congressional debates to discern the original intent. Changes in society should not be considered in applying the Constitution because the 10th Amendment provides that any issue not addressed in the Constitution should be left to the states.
- Textualism:** The text of the Constitution should be applied as written in the most reasonable way possible. A justice should not consider the intent behind the law or the circumstance being applied.
- Living Document:** The Constitution is a living document, and its authors intended for judges to identify what it says, consider other writings, and put those writings into the context of the time. This is sometimes referred to as applying the "spirit of the law."

**STARE DECISIS ("STAND BY THE DECISION")**  
The Supreme Court has adopted the doctrine of *stare decisis*, which compels justices to stand by the court's prior decisions (i.e., precedents). However, many justices on the current Supreme Court have expressed a willingness to overturn precedents they believe were incorrectly decided.

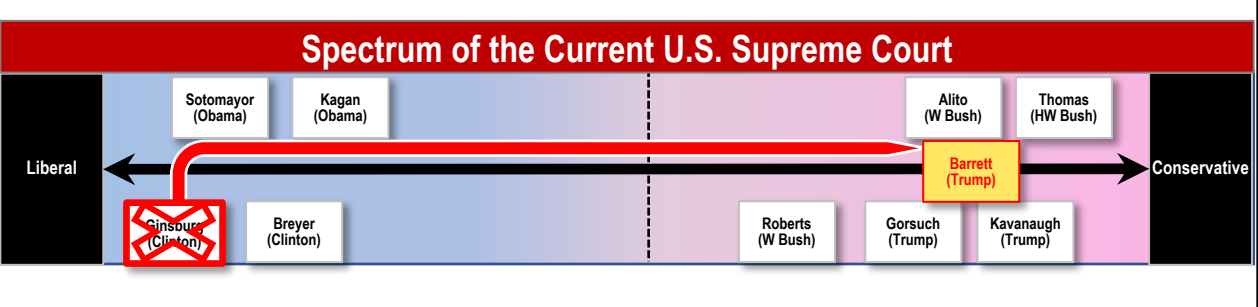
## Key Issues at Stake

### Abortion, Environmental Protection, Business Regulation, Affirmative Action, Gun Restrictions, and Healthcare Access

**TRUMP HAS NOMINATED CONSERVATIVE JUDGES**  
Trump has filled vacancies at every level of the judiciary with conservative judges. Trump's appointees tend to be white men, relatively young, and chosen to fill seats in Republican-leaning states. Trump's appointees are expected to serve and decide cases using conservative principles of constitutional interpretation (e.g., Originalism and Textualism) for decades.

**TRUMP'S SUPREME COURT NOMINEES**  
Trump has appointed Associate Justices Gorsuch and Kavanaugh to the Supreme Court, both conservative proteges of retired Associate Justice Kennedy. Amy Coney Barrett is Trump's latest nominee to the Supreme Court. She is a devotee of deceased Associate Justice Scalia and awaits Senate confirmation. Each of Trump's nominees is reliably conservative and has expressed a willingness to overturn precedent he or she believes was incorrectly decided.

**WHAT'S AT STAKE**  
Significant, divisive issues likely to be argued before the court include access to healthcare, access to clean drinking water and clean air, protection from workplace discrimination, travel bans, restrictions on gun ownership, immigration, voter purges, public unions, prisoners' rights, restrictions on reproductive rights, and gay marriage.



**Certain Precedents at Risk**

- ABORTION AND THE RIGHT TO PRIVACY:** *Roe v. Wade*, decided in 1973, protects woman's liberty (or right to privacy) to choose to have an abortion without excessive government restriction.
- LGBTQ+ RIGHTS:** *Obergefell v. Hodges*, decided in 2015, protects same sex marriage under the Constitution.
- OBAMACARE:** *National Federation of Independent Business v. Sebelius*, decided in 2012, upheld the Patient Protection and Affordable Care Act, which requires individuals to obtain health insurance (which can't be denied because of pre-existing medical conditions) or pay a penalty.
- RESTRICTIONS ON GUN OWNERSHIP:** *District of Columbia v. Heller*, decided in 2008, ruled that the right to bear arms is not unlimited; thus, gun ownership may be regulated.
- BAN ON DREAMERS:** By executive order, Trump ended the Deferred Action for Childhood Arrivals (or DACA) program in 2017 without providing any basis for doing so. The order placed in limbo the legal residency status of over 800,000 children brought into the U.S. illegally by their parents through no fault of their own. In June 2020, the court struck down Trump's decision to cancel the program because it lacked any reasoning or analysis of the benefits or harm brought by terminating the program.

## Composition History

YEAR	EVENTS
1787	Constitutional Convention in 1787 did not spell out details for the U.S. Supreme Court—e.g., no age, experience or citizenship requirement nor a fixed number of justices. Details were left to Congress and the President (1787)
1789	Judiciary Act of 1789 established a Supreme Court of six justices and established the three-tier federal court system; the middle tier consisted of appellate circuit courts to which a Supreme Court justice (and a District Court judge) was assigned and traveled to the location of the court to hear appeals (1789) <b>6 Justices</b>
1801	Judiciary Act of 1801 reduced the size of the Supreme Court to five justices (upon the retirement or death of the sixth sitting justice) (1801) <b>5 Justices</b>
1807	As the U.S. expanded westward and caseloads and circuit travel increased, a seventh justice was added to the Supreme Court (1807) <b>7 Justices</b>
1837	With further expansion westward, the eighth and ninth justices were added to the Supreme Court (1837) <b>9 Justices</b>
1863	Under the leadership of President Lincoln in opposition to the <i>Dred Scott</i> decision (ruling the black people were not U.S. citizens) and in light of the influx of settlers in California, a tenth justice was added (1863) <b>10 Justices</b>
1866	To prevent President Johnson from tipping the Supreme Court in favor of the Southern states (and upholding state codes limiting the voting and employment rights of black people), Congress passed the Judicial Circuits Act in 1866, reducing the Supreme Court back to seven (upon the retirement or death of the eighth sitting justice, which never occurred prior to the subsequent expansion of the Supreme Court in 1869 (1866) <b>7 Justices</b>
1869	New judiciary act passed setting the number of Supreme Court justices at nine. The Act also required six justices to be present to form a quorum for decisions to be adopted (1869) <b>9 Justices</b>
1937	As President Roosevelt grew frustrated with the Supreme Court for striking down many New Deal laws he sponsored to end the Great Depression, he proposed increasing the Supreme Court membership to 15 Justices. His "court packing" was wildly unpopular and rejected by the Senate

## Status Quo vs. Reform

**Option A: Do Nothing**

President of the United States (Nomination Authority) and U.S. Senate (Consent Authority) oversee Judicial Appointments.

**U.S. Supreme Court: 9 Justices**

HW Bush	Clinton	W Bush	Obama	Trump
Thomas	Breyer	Roberts	Sotomayor	Gorsuch
		Alito	Kagan	Kavanaugh
				Vacant

**STATUS QUO**  
For the past 150 years, the Supreme Court has comprised nine members. During this period, respected, well-credentialed nominees on opposite ends of the spectrum have received widespread support (e.g., Scalia, 98-0; and Ginsburg, 96-3). Over the years, there have been a few surprises. For example, seemingly conservative judicial nominees (e.g., Souter, Kennedy, and Warren) ruled at or to the left of the center on specific issues. Arguably, there's no compelling need to change.

**Option B: Expand the Court**

President of the United States (Nomination Authority) and U.S. Senate (Consent Authority) oversee Judicial Appointments.

**U.S. Supreme Court: 13 Justices**

HW Bush	Clinton	W Bush	Obama	Trump	Biden (if elected)
Thomas	Breyer	Roberts	Sotomayor	Gorsuch	Vacant
		Alito	Kagan	Kavanaugh	Vacant
				Barrett	Vacant
					Vacant

**COURT PACKING**  
The Republican Senate majority refused to consider Obama's nomination of Judge Merrick Garland, a moderate, to replace Associate Justice Scalia. This gave Trump and the Republican Senate the ability to fill the vacancy left by Scalia's death and prevent a liberal majority of justices on the Supreme Court. The death of Associate Justice Ginsburg has given Trump another appointment which, upon the vote by the Republican-controlled Senate, will cement a conservative majority on the Supreme Court.

Some Democrats have called for reform to prevent the Supreme Court's new conservative majority from blocking progressive legislation or overturning cherished personal freedoms. The leading reform proposal is to expand the size of the Supreme Court. If Democrats win the presidency and control both houses of Congress, Democrats would be able to pass a new judiciary act. Presumably, Democrats would increase the number of justices from 9 to 13 (at a minimum), which would allow them to create a liberal majority. Even if justified, packing the court would begin a potentially endless cycle of further escalation and politicization that could badly damage the court's legitimacy.

**Option C: Impose Term Limits**

Year	Thomas	Breyer	Roberts	Alito	Sotomayor	Kagan	Gorsuch	Kavanaugh	Barrett	Thomas Vacancy
2021	Term Expires									
2023		Term Expires								
2025			Term Expires							
2027				Term Expires						
2029					Term Expires					
2031						Term Expires				
2033							Term Expires			
2035								Term Expires		
2037									Term Expires	
2039										Term Expires

**TERM LIMITS**  
Under a term limit regime, each new Justice would serve for an 18-year period following appointment. One of the existing Justices would roll off the court every other year (in the order of seniority). As a result, every President would get the opportunity to select two new Justices during his or her first term (and potentially two additional Justices if the President is re-elected for a second term). In the case of death or retirement of a Justice prior to the expiration of the term, the then-sitting President would nominate a replacement with advice and consent of the Senate for the balance of the vacated term. This proposal will not prevent voting blocs from forming or eliminate some of the gamesmanship of the current system.

**Option D: Use Lottery for Supreme Court Panel**

**Associate Justices of the Supreme Court**

U.S. Supreme Court (9 Justices)	U.S. Circuit Courts of Appeals (179 Judges)
Roberts	Washington, D.C. (D.C. and Federal Circuits)
Thomas	Boston (1st Circuit)
Vacant	New Orleans (5th Circuit)
Breyer	New York (2nd Circuit)
Alito	Cincinnati (6th Circuit)
Sotomayor	Philadelphia (3rd Circuit)
Kagan	Chicago (7th Circuit)
Gorsuch	Richmond (4th Circuit)
Kavanaugh	St. Louis (8th Circuit)
	San Francisco (9th Circuit)
	Denver (10th Circuit)
	Atlanta (11th Circuit)

**SUPREME COURT LOTTERY**  
The Justices of the Supreme Court would be placed in a pool with all the Judges of the Circuit Courts of Appeals. For each case that is appealed to the Supreme Court, a panel of judges would be selected (by lottery) from the pool to hear the appeal. Because the judges for a particular case would be selected randomly, the politicization of Supreme Court appointments would diminish, while attention and politics around the appointment of appellate court judges would increase.

**Option E: Appoint Balanced Bench**

Senate Republican Majority	Senate Democrat Majority	Independent Commission
5 Judicial Appointments	5 Judicial Appointments	5 Judicial Appointments

**U.S. Supreme Court: 15 Justices**

Associate Justice	Associate Justice	Associate Justice
Associate Justice	Associate Justice	Associate Justice
Associate Justice	Associate Justice	Associate Justice
Associate Justice	Associate Justice	Associate Justice
Associate Justice	Associate Justice	Associate Justice

**BALANCED BENCH**  
Although there are various versions of this proposal, fundamentally, the size of the Supreme Court would be expanded to 12 or 15 members. One-third of the members would be selected by a majority of Senate Democrats and one-third selected by members of a majority of Senate Republicans. The final third of the members would be chosen by an independent commission or by agreement of the Senate-approved Justices. The balanced bench proposal would require a Constitutional amendment.