



Written by [Steve Byas](#) on July 15, 2021

Breyer Resists Democrat Pressure to Step Down

Democrats are concerned that they could lose control of the U.S. Senate after the 2022 mid-term elections. If this happens, it could be virtually impossible for President Joe Biden to nominate someone to the U.S. Supreme Court that could win confirmation in a Republican-controlled Senate.

Because of this, Democrats are openly urging Associate Justice Stephen Breyer, who is now 83 years old, to retire this year, so Biden can nominate and get confirmed a replacement before the Republicans do gain control. With the Senate tied, 50-50, the Republicans need to win only one seat to block a Biden nomination — that is, if the Republicans all stand together.



AP Images
Justice Stephen Breyer

Breyer, however, is resistant, and he told CNN that he has no plans to retire anytime soon.

The death of Justice Ruth Bader Ginsburg shortly before the 2020 presidential election allowed President Donald Trump to nominate Amy Coney Barrett as her replacement, giving justices nominated by a Republican president a 6-3 advantage over justices nominated by a Democrat. Breyer was nominated by President Bill Clinton in 1994, while Obama tapped Kagan and Sotomayor.

It should be noted that the six justices nominated by Republican presidents do not always vote together on cases, although the three justices nominated by Democrats usually do.

Breyer told CNN that his health is a major consideration, and, as of now, he apparently believes it is good. He is now the senior-ranking justice among the reliably “liberal” bloc. As such, he gets to lead that wing of the Court in writing dissents to rulings made by the more “conservative” bloc. He explained to CNN how the judicial conferences work. According to Breyer, Chief Justice John Roberts initiates the private conferences with his thoughts on the case before them. He is then followed by the senior member of the Court, Clarence Thomas, who ascended to the Supreme Court after being nominated by President George H.W. Bush in 1991.

Breyer is next in line to offer his opinions about the case. “You have to figure out what you’re going to say in conference to a greater extent [because he is the first “liberal” to speak, and it is his chance to attempt to influence the other members of the court], to get it across simply. You have to be flexible, hear other people, and be prepared to modify your views. But that doesn’t mean a blank mind.”

While dissenting opinions have often formed the basis of a reversal from the Court years later, Breyer considers it more important to come to some common ground today.

During the presidential campaign, Biden dodged questions of whether he would push for “packing the court” (increasing the number of justices on the Supreme Court so he would get to nominate more “progressive” justices if he won the election, and the Senate, if in the hands of Democrats, could confirm them all). In what many on the Left consider a sell-out by Biden, he set up a commission to



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study the idea of expanding the Supreme Court. But with the refusal of all the Senate's 50 Republicans and Democrat Senator Joe Manchin of West Virginia to even consider increasing the number of justices on the Supreme Court, it is doubtful that the Court's size will grow, regardless of what the commission suggests.

Representative Alexandria Ocasio-Cortez (D-N.Y.) was among those who said it would be good for Breyer to retire. "We have had very difficult experiences with making, I believe the opposite mistake, and especially if Senate Democrats are not going to pass reforms on HR 1, we cannot rely solely on a wish of winning elections, particularly in the Senate when voting rights are under attack in Georgia, Arizona, and Texas across the country," Ocasio-Cortez told CNN. "And if we're not going to pass HR 1, with the preemptive clauses that can roll back some of that voter suppression attacks back, yeah, I believe that we should protect our Supreme Court and I bet that should absolutely be a consideration."

As of now, one speculation as to who would replace Breyer, should he opt for retirement, is Judge Ketanji Brown Jackson, presently a judge on the D.C. Court of Appeals nominated to that post by Biden just this year. She was confirmed by a vote of 53-44, and replaced Merrick Garland on the bench. Garland left that court to become Biden's attorney general. Before that, Jackson was first named a federal judge by President Barack Obama in 2012, winning confirmation the next year.

She issued multiple rulings against Donald Trump during his presidency.



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