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Supreme Court Justice Ginsburg's Passing Sparks a Controversial Election Year Battle in the Senate Over the Future of the Court

The passing of Supreme Court Justice Ruth Bader Ginsburg late last week has ignited a controversial election year battle in the Senate regarding the future of the nation's highest court. In the immediate aftermath of the news, Senate Majority Leader Mitch McConnell signaled his intent to fill Justice Ginsburg's seat with President Trump's nominee prior to the upcoming November election and Trump vowed to announce his choice to fill the vacancy on Saturday. Republicans hold a 53-47 majority in the Senate, and appear to have enough votes to potentially move forward with the confirmation process of Trump's pick, as only two Senate Republicans have taken a principled stance against the move by citing the proximity of the presidential election which is only five weeks away. Back in February of 2016, following the death of Supreme Court Justice Antonin Scalia, McConnell and Senate Republicans refused to move on then-President Obama's nomination of Merrick Garland to fill the seat by contending that it was too close to act given that the presidential election was nine months away. Thus, Democrats have been quick to criticize most of their Republican colleagues for their stance reversal this time, especially considering that in the current situation, the election is even much closer than it was when Scalia passed away in early 2016.

To justify his inaction regarding the replacement of Supreme Court Justice Scalia in February 2016, McConnell famously stated that "The American people should have a voice in the selection of their next Supreme Court justice. Therefore, this vacancy should not be filled until we have a new president." Furthermore, he emphasized weeks later that the Senate's decision was about principle, and not about a specific person, implying that the same would be done if a Republican president was to nominate a conservative judge to the Supreme Court during an election year. As a result, now that this type of scenario has become reality but the approach to it has changed, nonpartisan observers have called the Senate Majority Leader out for his inconsistency. Senator Lindsey Graham has also been criticized for supporting a vote on a Supreme Court nominee so close to an election since he also spoke in 2016 about being against that type of action, even going as far as daring people to heed his words for future reference. In March of 2016, Graham said "I want you to use my words against me. If there's a Republican president in 2016 and a vacancy occurs in the last year of the first term, you can say Lindsey Graham said let's let the next president, whoever it might be, make that nomination." Ironically, this is in fact the exact situation we are faced with following the passing of Supreme Court Justice Ginsburg, and yet, Graham is not taking the position that he said that he would.

Ultimately, it appears as though only two Republican senators – Senator Collins of Maine and Senator Murkowski of Alaska – have remained consistent with their party's approach to the Merrick Garland nomination in 2016. Collins expressed that the Senate should not vote on a lifetime appointment to the Supreme Court until after the upcoming election and Murkowski also stated that she would not vote to confirm a replacement until the next president is elected. Since Republicans hold a 53-47 majority in the Senate, at least 4 total GOP senators would need to break with their party's position on the subject of voting for a Trump Supreme Court nominee for it not to be allowed to move forward, and this appears unlikely. Therefore, once Trump announces his pick on Saturday, it looks as though Senate Republicans will try to begin the process of confirming the candidate as soon as possible.

Supreme Court Justice Ginsburg's passing has certainly drawn more focus to the issue of the court in voters' minds, and it will be interesting to see how this may affect the outcome of the upcoming presidential election as well as critical Senate races, with future control of both the presidency and the upper chamber of Congress yet to be decided in November.