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Antonin Scalia, Ruth Bader Ginsberg, and the Supreme Court

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Abstract

This article breaks down the implications of Supreme Court Justice Ruth Bader Ginsburg's health problems-all the more relevant due to her recent hospitalization in May 2020-and shows how the Democratic Party has been outmaneuvered by the Republicans in terms of SCOTUS control. The path to reestablishing a Democratic Supreme Court, as formerly seen from the 1940s-1970s, depends on the defeat of President Donald Trump in the 2020 general election.

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About two years ago, Justice Ruth Bader Ginsberg made it safely out of the hospital after treatment for her fractured ribs. Since she is, like all but two Supreme Court Justices (Sandra Day O'Connor and Anthony Kennedy), planning on serving for life, anything but her passing appears to be able to keep her on the bench for the foreseeable future. This is good for the Democratic Party, which, as we know, has lost out on the past two Supreme Court Justice battles with the GOP-the first one being stolen from them by Mitch McConnell, and the second rammed through a GOP-held Senate. How does this keep happening, and what can the Dems do to prevent such calamities in the future?

Let's review from how these contentious processes for what was once an apolitical institution started in the first place. On February 13, 2016, 79-year-old Supreme Court Justice Antonin Scalia was found dead at a luxury resort in West Texas. He reportedly died of natural causes. His sudden death split the Supreme Court Justices evenly (4-4) between liberals and conservatives. Then-President Obama said on multiple occasions that he plans to nominate a successor justice, going back and forth between Sri Srinivasan, an Obama- appointed DC Circuit Court judge since 2013, and a 9th Circuit Judge named Merrick Garland before eventually settling on the latter. Multiple Republican Figures, such as Marco Rubio, Ted Cruz and Senate Majority Leader Mitch McConnell, refused to even consider an Obama appointee during the 2016 election year, and as soon as Trump was sworn in, rammed their first pick, Neil Gorsuch, through the confirmation process. This could have been the only seat they picked up during Trump's first term, but then Anthony Kennedy announced his own plans for retirement and there

was another opportunity. Since the GOP controlled the Senate 51-49 before the midterms, they got that seat as well and gave it to the highly controversial Justice Brett Kavanaugh, who at his young age will be seated for decades to come.

How can Dems reverse this bad playbook, and take back the Court that they controlled from the 1940's to the 1970's in large measure? It's simple-they have to a) make sure that Ginsberg remains in excellent health through the end of 2020, and b) win back both the presidency and Senate in 2020. This may come off as snarky, but it's not such a heavy lift as it would have seemed before the midterms, when safely GOP districts were taken by Dems across the country. The electoral patterns favor another Blue Wave, as the Southwestern US and suburbs across the country lean more Democratic. These changes are largely in part thanks to increased youth and minority support for Democrats driven by rightful fear of Trump's policies, the perception that the GOP doesn't stand for the many diverse demographic groups that make up the US today, and better mobilization nationwide by progressive, feminist and LGBTQ+ groups that by and large support the Party. Election night 2018 showed that there is hope for Team Blue, and so long as Millennials stay engaged in politics, the electoral maps will continue to shift the way of the future in 2020 as they did earlier this month. Ginsberg may not live to see these reflective political changes happen in full force, but we certainly will.