

AN EDUCATIONAL UPDATE FROM  
THE SOUTHEAST LAW INSTITUTE™, INC.

**To:** Interested Persons  
**Date:** October 2020  
**From:** A. Eric Johnston  
**Re:** Will SCOTUS Become the Constitutional Court it was Meant to be?

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The recent passing of U.S. Supreme Court Justice Ruth Bader Ginsburg is potentially a more earth shaking event than all of the other trials and tribulations we have faced over the last year. Her death, coming days before a presidential election, highlights just how important this election is. While Justice Ginsburg was and some of the other justices are far passed normal retirement age, the probability of any one of them passing increases day by day. That fact alone would highlight the importance of this election, but with this liberal icon's passing so close to the time of the election, but with sufficient time to replace her, is like turning a light on in a dark room.

It is said the most important job of a President is to appoint justices to the U.S. Supreme Court ("SCOTUS"). This is probably true. The appointments leave a legacy far beyond the one or two terms a president may serve. Some presidents have had little opportunity to appoint a justice, but President Donald Trump has had two so far and now, with significant probability, a third.

Since the 1940s, SCOTUS has become a social policy maker, rather than a constitutionally directed arbiter of the law. Many would go back further in time and decry the court's exceeding its constitutional bounds of review and expanding federal authority generally. However, for our purposes, let us focus on the social issues so profoundly effected by SCOTUS over the last 80 years or so.

Two SCOTUS opinions in the 1940s laid the ground work for the removal of religious freedom from the public square in the 1960s. The court's liberal interpretation of the establishment clause and restrictive interpretation of free exercise clause opened the door for later removing prayer and Bible reading from public schools and in 1973, the formulation of the notorious *Lemon Case* that gives federal judges *carte blanche* to find virtually any religious activity prohibited by the establishment clause. Also, in the 1960s, the court evolved the "privacy" rights found within the "penumbras" of the Constitution, meaning those rights are supposedly there to be discovered by the liberal etiology of the court. This rather non-existent privacy right resulted in the 1973 *Roe v. Wade* opinion which legalized abortion on demand throughout an entire pregnancy. In 2015, using the same constitutionally unbiased reasoning, SCOTUS legalized same sex marriage. Throughout these decades, liberal policy makers have relied on SCOTUS to accomplish what they could not accomplish in legislative bodies. SCOTUS has been the leading policy maker.

Regardless of President Trump's foibles and what you may think of him personally, his policies have been contrary to these judge made policies. His policies have caused so great offense to liberals that they have relentlessly and without basis attacked him. Congressional leaders have sought to diminish him and even remove him. He rubs them the wrong way, but social affronts are not why they have attacked him. It is because he was and is restoring America to a proper constitutional basis. Their fear, and rightfully so, is that his policies, including specifically appointments to SCOTUS, will undo all they have come to believe that we are democracy. Nancy Pelosi, Chuck Schumer and others speak of our "democracy" being under attack. It is easy for them to claim that in the public fora to which they have access. It is not true at all. We are and remain a republic guarded by our constitution.

Regardless of the turmoil of the past three and a half years, President Trump has perhaps accomplished more for our country by his SCOTUS appointments than by any other actions. With the death of Justice Ginsburg, the world of the democrats is placed in a tail spin. With another appointment to SCOTUS, Trump is likely to change the direction of this country. Never in SLI's experience has so much suddenly come online. The acrimony of the Senate Judiciary Committee hearings regarding the nominations of Judge Robert Bork, Justice Clarence Thomas and Justice Brett Kavanaugh have in the words of commentator Brit Hume animated these Supreme Court battles because they are afraid the "legally shaky" right to abortion in *Roe v. Wade* might go away. In other words, it is all about abortion. It is confounding to try to understand why the right to kill your unborn child has become the engine driving this division in our country and the utter contempt by liberals for everything civil and right in the political and legal processes.

Our belief that SCOTUS may reverse *Roe* was the primary motivation for our initializing the effort to criminalize abortion by the passage of the Alabama Human Life Protection Act last year. The balance of power on SCOTUS for the protection of life might finally exist after then 46 years. While there may be some uncertainty about Chief Justice John Roberts, another potential pro life vote on SCOTUS will give us confidence that our effort is not in vain and that unborn children may once again find safety in their mothers' wombs. So, while Justice Ginsburg may be admired for her humanistic success, advancing women's rights, and having risen from humble origins, her passing brings the opportunity for justice to the unborn to finally be done.

Democrats say wait until after the election. That is a death wail for their policies of destruction. This Senate vote for Justice Ginsburg's replacement is perhaps the most important event of the Trump Presidency. As you know, the work of SLI is directly related to the opinions of SCOTUS. Just look at our recent Educational Updates and we have two more to come, dealing with religious freedom. Pray that it will happen and that nominee Amy Coney Barrett will be a person of God's own choosing and, that as a result, we will have a restoration of constitutional integrity, of reason and of true humanity on the United States Supreme Court.

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