

ASSEMBLY RESOLUTION No. 189

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED SEPTEMBER 21, 2020

Sponsored by:

Assemblywoman LISA SWAIN

District 38 (Bergen and Passaic)

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Assemblywoman NANCY J. PINKIN

District 18 (Middlesex)

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Co-Sponsored by:

Assemblymen Freiman, Benson, Mejia, Moen and Johnson

SYNOPSIS

Honors life and legacy of United States Supreme Court Justice Ruth Bader Ginsburg; respectfully urges United States Senate to refrain from voting on nominee to replace Justice Ginsburg on Court until after results of 2020 presidential election.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 9/24/2020)

1 **AN ASSEMBLY RESOLUTION** honoring the life and legacy of
2 Supreme Court Justice Ruth Bader Ginsburg.
3

4 **WHEREAS**, After 27 years of distinguished service on the United
5 States Supreme Court, Associate Justice Ruth Bader Ginsburg died
6 on September 18, 2020, at the age of 87; and

7 **WHEREAS**, Prior to her appointment to the Supreme Court in 1993,
8 Justice Ginsburg had a respected legal career: she attended Harvard
9 Law School and graduated from Columbia Law School; served as a
10 law clerk to a Judge of the United States District Court; served as a
11 law school professor at Rutgers University Law School from 1963
12 to 1972, and at Columbia Law School from 1972 to 1980; and was
13 appointed a Judge of the United States Court of Appeals for the
14 District of Columbia Circuit in 1980; and

15 **WHEREAS**, As a young attorney, Justice Ginsburg was instrumental in
16 the struggle for women’s rights, launching the Women’s Rights
17 Project of the American Civil Liberties Union and, from 1973 to
18 1976, winning five out of the six women’s rights cases that she
19 argued before the Court; and

20 **WHEREAS**, Justice Ginsburg’s successful advocacy for gender equality
21 significantly changed the law as it affects women, including the
22 landmark decision of Reed v. Reed, 404 U.S. 71 (1971), the first
23 case to hold that discrimination on the basis of sex violated the
24 equal-protection clause of the Fourteenth Amendment; and

25 **WHEREAS**, After her appointment to the Supreme Court, Justice
26 Ginsburg became a leader of the Court’s liberal wing, writing
27 majority opinions in United States v. Virginia, 518 U.S. 515 (1996),
28 holding that the Virginia Military Institute’s male-only policy
29 violated the Equal Protection Clause, and in Olmstead v. L.C., 527
30 U.S. 581 (1999), holding that the federal Americans with
31 Disabilities Act required states to place persons with mental
32 disabilities in community settings rather than institutions when
33 feasible; and concurring in Safford Unified School District v.
34 Redding, 557 U.S. 364 (2009) that the strip search of a middle-
35 school student violated the student’s Fourth Amendment rights
36 against unreasonable searches and seizures; and

37 **WHEREAS**, Justice Ginsburg was known for her powerful dissenting
38 opinions as well: in Bush v. Gore, 531 U.S. 98 (2000), where the
39 majority of Justices halted the Florida recount of votes in the 2000
40 election, thus effectively deciding the election for George W. Bush,
41 Justice Ginsburg wrote that the “conclusion that a constitutionally
42 adequate recount is impractical is a prophecy the Court’s own
43 judgment will not allow to be tested. Such an untested prophecy
44 should not decide the Presidency of the United States.” And in
45 Ledbetter v. Goodyear Tire Rubber Co., 550 U.S. 618 (2007), a 5-4
46 decision rejecting Lily Ledbetter’s discrimination claim on grounds
47 that she had missed the statutory 180-day deadline, Justice
48 Ginsberg wrote that “[t]he court does not comprehend or is

1 indifferent to the insidious way in which women can be victims of
2 pay discrimination,” and called on Congress to rewrite the statute to
3 modify the limitations period; Congress did so in 2009 with the
4 enactment of the “Lily Ledbetter Fair Pay Act,” Pub. L. 111-2, 123
5 Stat. 5, which provides that each paycheck that contains
6 discriminatory compensation is a separate violation regardless of
7 when the discrimination began; and

8 **WHEREAS**, Each of the current and retired members of the Supreme
9 Court issued statements expressing their personal sorrow at Justice
10 Ginsburg’s death and their appreciation for her service. Retired
11 Justice Anthony M. Kennedy stated: “By her learning she taught
12 devotion to the law. By her dignity she taught respect for others
13 and her love for America. By her reverence for the Constitution,
14 she taught us to preserve it to secure our freedom;” and

15 **WHEREAS**, Justice Ginsburg’s granddaughter stated that the Justice
16 dictated the following statement to her, only days before her death:
17 “My most fervent wish is that I will not be replaced until a new
18 president is installed;” and

19 **WHEREAS**, President Donald Trump has announced his intention to
20 nominate a replacement for Justice Ginsburg, despite the short time
21 period before the presidential election on November 3, 2020; and

22 **WHEREAS**, Of note, on March 16, 2016, almost eight months before
23 the 2016 presidential election, President Barack Obama nominated
24 Merrick Garland for Associate Justice of the Supreme Court to
25 succeed Antonin Scalia, but the Republican leadership of the
26 United States Senate refused to consider the nomination on grounds
27 that 2016 was an election year; and

28 **WHEREAS**, In the view of this House, the privilege of nominating a
29 person to fill the vacancy on the United States Supreme Court
30 should be held by the next president to be chosen by the voters in
31 the 2020 election, and the Republican leadership of the United
32 States Senate should follow the precedent established by the
33 Republican leadership in 2016; now, therefore,

34

35 **BE IT RESOLVED** by the General Assembly of the State of New
36 Jersey:

37

38 1. This House honors the life and legacy of Supreme Court
39 Justice Ruth Bader Ginsburg and respectfully urges the United
40 States Senate to refrain from voting on a candidate for the Supreme
41 Court nominated by President Trump until after the results of the
42 November 3, 2020 election are confirmed and, if President Trump is
43 not re-elected, to hold the vote after the new president takes office.

44

45 2. Copies of this resolution, as filed with the Secretary of State,
46 shall be transmitted by the Clerk of the General Assembly to every
47 member of the United States Senate and each member of the United
48 States House of Representatives elected from this State.

STATEMENT

This resolution honors the life and legacy of Supreme Court Justice Ruth Bader Ginsburg and respectfully urges the United States Senate to refrain from voting on a candidate for the Supreme Court nominated by President Trump until after the results of the November 3, 2020 election are confirmed and, if President Trump is not re-elected, to hold the vote after the new president takes office.

After 27 years of distinguished service on the United States Supreme Court, Associate Justice Ruth Bader Ginsburg died on September 18, 2020, at the age of 87. Prior to her appointment to the Supreme Court in 1993, Justice Ginsburg had a respected legal career: she attended Harvard Law School and graduated from Columbia Law School; served as a law clerk to a Judge of the United States District Court; served as a law school professor at Rutgers University Law School from 1963 to 1972, and at Columbia Law School from 1972 to 1980; and was appointed a Judge of the United States Court of Appeals for the District of Columbia Circuit in 1980.

As a young attorney, Justice Ginsburg was instrumental in the struggle for women's rights, launching the Women's Rights Project of the American Civil Liberties Union and, from 1973 to 1976, winning five out of the six women's rights cases that she argued before the Court. Justice Ginsburg's successful advocacy for gender equality significantly changed the law as it affects women, including the landmark decision of Reed v. Reed, 404 U.S. 71 (1971), the first case to hold that discrimination on the basis of sex violated the equal-protection clause of the Fourteenth Amendment.

After her appointment to the Supreme Court, Justice Ginsburg became a leader of the Court's liberal wing, writing majority opinions in United States v. Virginia, 518 U.S. 515 (1996), holding that the Virginia Military Institute's male-only policy violated the Equal Protection Clause, and in Olmstead v. L.C., 527 U.S. 581 (1999), holding that the federal Americans with Disabilities Act required states to place persons with mental disabilities in community settings rather than institutions when feasible; and concurring in Safford Unified School District v. Redding, 557 U.S. 364 (2009) that the strip search of a middle-school student violated the student's Fourth Amendment rights against unreasonable searches and seizures.

Justice Ginsburg was known for her powerful dissenting opinions as well: in Bush v. Gore, 531 U.S. 98 (2000), where the majority of Justices halted the Florida recount of votes in the 2000 election, thus effectively deciding the election for George W. Bush, Justice Ginsburg wrote that the "conclusion that a constitutionally adequate recount is impractical is a prophecy the Court's own judgment will not allow to be tested. Such an untested prophecy should not decide the Presidency of the United States." And in

1 Ledbetter v. Goodyear Tire Rubber Co., 550 U.S. 618 (2007), a 5-4
2 decision rejecting Lily Ledbetter’s discrimination claim on grounds
3 that she had missed the statutory 180-day deadline, Justice Ginsberg
4 wrote that “[t]he court does not comprehend or is indifferent to the
5 insidious way in which women can be victims of pay
6 discrimination,” and called on Congress to rewrite the statute to
7 modify the limitations period; Congress did so in 2009 with the
8 enactment of the “Lily Ledbetter Fair Pay Act,” Pub. L. 111-2, 123
9 Stat. 5, which provides that each paycheck that contains
10 discriminatory compensation is a separate violation regardless of
11 when the discrimination began.

12 Each of the current and retired members of the Supreme Court
13 issued statements expressing their personal sorrow at Justice
14 Ginsburg’s death and their appreciation for her service. Retired
15 Justice Anthony M. Kennedy stated: “By her learning she taught
16 devotion to the law. By her dignity she taught respect for others
17 and her love for America. By her reverence for the Constitution,
18 she taught us to preserve it to secure our freedom.”

19 Justice Ginsburg’s granddaughter stated that the Justice dictated
20 the following statement to her, only days before her death: “My
21 most fervent wish is that I will not be replaced until a new president
22 is installed.”

23 President Donald Trump has announced his intention to
24 nominate a replacement for Justice Ginsburg, despite the short time
25 period before the presidential election on November 3, 2020. Of
26 note, on March 16, 2016, almost eight months before the 2016
27 presidential election, President Barack Obama nominated Merrick
28 Garland for Associate Justice of the Supreme Court to succeed
29 Antonin Scalia, but the Republican leadership of the United States
30 Senate refused to consider the nomination on grounds that 2016 was
31 an election year.

32 In the view of this House, the privilege of nominating a person to
33 fill the vacancy on the Supreme Court should be held by the next
34 president to be chosen by the voters in the 2020 election, and the
35 Republican leadership of the United States Senate should follow the
36 precedent established by the Republican leadership in 2016.