

Grassley: Expect Next Supreme Court Fight This Summer

During an appearance this week, Senate Judiciary Committee Chairman Chuck Grassley (R-Iowa) said he expects there to be a new vacancy for President Donald Trump to fill on the Supreme Court later this summer.

He told a group of manufacturing corporate leaders during a question-and-answer session that the upcoming resignation was being rumored. He didn't elaborate, but he did say he expected the president to appoint a replacement from the list he released prior to the election last November from which he picked Justice Neil Gorsuch.

"I don't know about racial and ethnic divisions, but there's some very good females on there that would make good Supreme Court Justices as well," Grassley told members of the National Association of Manufacturers, Kent Corporation employees, and an assortment of local and state political figures at the Kent Corporation headquarters in Muscatine, Iowa.

Who Will It Be?

Of the eight possible justices, three are the most likely: Anthony Kennedy, Ruth Bader Ginsburg, and Stephen Breyer.

Kennedy, who administered the Oath of Office to Gorsuch—who was once one of his law clerks—will turn 81 shortly after the current term is over later this summer. According to numerous reports, Gorsuch's mentor had been toying with retirement even before the current term began. He joined the high court in 1988.

Ginsburg is 84 years old and has also been rumored as a potential upcoming retiree. One of the president's confidants, Chris Ruddy, told *Business Insider* earlier this week that he

thought it was a mistake for Republicans to invoke the so-called “nuclear option” to get Gorsuch on the court, and that he was encouraging the president to offer a deal whereby Ginsburg steps down and is replaced by President Barack Obama’s nominee, Chief Judge Merrick Garland of the D.C. Circuit Court of Appeals. She joined the high court in 1993.

Breyer is the least likely of the three to retire at this point, being only 78 years old, but he was appointed to the high court in 1994, only one year later than Ginsburg. He’s given no indication that he wants to retire, but sometimes, that decision isn’t necessarily made voluntarily—an unannounced health condition could prompt a sudden retirement.

What Kind of Fight Should We Expect?

Honestly, what kind of fight we see in the Senate will be determined largely by who retires and who the president nominates as a replacement. But, there’s really only two logical outcomes:

1. President Trump Nominates a Garland

This is the least likely of the two scenarios, but if the president finds he needs to break the gridlock to get his agenda rolling again, he may offer this as an olive branch to Democrats, knowing that he’s likely to replace at least two more justices before his first term expires. The question then will be whether or not the Democrats will accept it, or if they will continue to play hardball.

If they accept it, expect there to be very little fight and a rapid confirmation process. If they don’t, the president could withdraw the nomination and place a conservative from his list on the court instead. Democrats would then have to explain themselves on yet another issue in the 2018 election.

2. President Trump Nominates a Conservative

This is much more likely, particularly if he thinks he can win over conservatives, such as the House Freedom Caucus, to move his agenda forward. In this case, Democrats can slow the process down with procedures, but due to the “Nuclear Option” invoked during the Gorsuch confirmation, they have no ability to stop it.

That doesn’t mean they won’t try to make the candidate less palatable to moderate Republicans. That would mean a whole new level of “Borking” we have yet to see from them before. Collegiality will likely go out the window, as well.

The high court remains in session until about mid-June. It is likely we will know more about retirement plans right around that time. But, if evangelical Christians are keen to have another constructionist/originalist added, they need to make their collective voice heard sooner, not later. {eo}