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# Trump's Win Will Change the Supreme Court, but Not 'Automatically'

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U.S. Supreme Court

President-elect Donald Trump [said during the last debate](#) in October that if he became president, the U.S. Supreme Court would “automatically” overturn *Roe v. Wade*, sending the contentious issue of abortion back

to the states.

But the high court does not make change “automatically”—or quickly.

It is no accident that a recurring architectural motif at the Supreme Court’s building is the slow-moving tortoise. The court prides itself on being the one branch of government that does not respond to every change blowing in the wind.

The late chief justice William Rehnquist in 2000 had the chance to overturn the controversial *Miranda v. Arizona* “right to remain silent” decision, which he intensely disliked. But he would not do it, asserting that the Miranda warning had “become embedded in routine police practice to the point where the warnings have become part of our national culture.”

More pertinent to abortion, the court in 1992 passed up the chance to overturn *Roe v. Wade*, [with a majority](#) in *Planned Parenthood v. Casey* that included Justice Anthony Kennedy deciding that doing so would upset the expectations of a generation of women that had grown up with the abortion right.

Personnel changes at the court will also come slowly.

President Barack Obama’s [nomination of](#) Judge Merrick Garland of the U.S. Court of Appeals for the D.C. Circuit has almost certainly met its demise. Senate Majority leader Mitch McConnell’s gambit of sitting on the nomination—he announced his stance just hours after Justice Antonin Scalia died in February—has achieved its goal: thwarting Obama’s final Supreme Court nomination.

With a Republican Senate majority now secure as a result of Tuesday’s election, Trump could move quickly after being sworn in in January to nominate someone similar to Scalia—though Democrats might try to return McConnell’s favor and make mischief to slow the nomination down.

But even if a Scalia replacement is seated by spring, his or her participation in cases will come slowly. And it is worth noting that even Scalia often found himself in dissent in major cases—including the same-sex marriage decisions—so a junior justice in Scalia’s image won’t immediately be able to turn the court rightward.

Major change in the court’s direction will depend on which justices depart from the court in the next four years.

Justice Ruth Bader Ginsburg is 83, Anthony Kennedy is 80, and Stephen Breyer is 78. Replacing any of them with a Trump nominee—he has already [made public](#) a list of 20 possible names—would put a conservative in the seat of a moderate or liberal. That could spark real doctrinal change, but again, not right away.

A more immediate dilemma may face Ginsburg. Her [disparaging remarks about Trump](#) over the summer—which she since said she regretted—may haunt her once the court begins to hear cases in which Trump or one of his appointees is a party. Recusal motions, usually a rare and risky strategy, might become routine.

Ginsburg offered a hint just a few days ago about how she will handle such cases.

The court [issued an order](#) in an election-related case titled *Ohio Democratic Party v. Donald J. Trump for President*. Far from recusing herself, Ginsburg wrote a short statement relating to the court’s decision.

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