

Justice Ginsburg says she'll stay on court as long as she's healthy

Some have called for Justice Ruth Bader Ginsburg to step down in time for President Obama to name her successor, likely upholding the court's ideological balance. But Ginsburg said her retirement depends on her health and intellect, not on who would appoint her successor.

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Todd Heisler / The NYT

Justice Ruth Bader Ginsburg in her chambers on Friday, in Washington.

WASHINGTON — Justice Ruth Bader Ginsburg, 80, vowed in an interview to stay on the Supreme Court as long as her health and intellect remained strong, saying she was fully engaged in her work as the leader of the liberal opposition on what she called “one of the most activist courts in history.”

In an interview Friday Ginsburg spoke about affirmative action, abortion and same-sex marriage, and added that she had made a mistake in joining a 2009 opinion that laid the groundwork for the court's decision in June effectively striking down the heart of the Voting Rights Act of 1965. The recent decision, she said, was “stunning in terms of activism.”

Unless they have a book to sell, Supreme Court justices rarely give interviews. Ginsburg has given several this summer, perhaps in reaction to calls from some liberals that she step down in time for President Obama to name her successor.

She said repeatedly Friday that the identity of the president who would appoint her replacement did not figure in her retirement planning. "There will be a president after this one, and I'm hopeful that that president will be a fine president," she said.

Were Obama to name Ginsburg's successor, it would presumably be a one-for-one liberal swap that would not alter the court's ideological balance. But if a Republican president is elected in 2016 and gets to name her successor, the court would be fundamentally reshaped.

Making adjustments

Ginsburg has survived two bouts with cancer but her health is good, she said, and her work ethic exceptional.

Her age has required only minor adjustments. "I don't water-ski anymore," Ginsburg said. "I haven't gone horseback riding in four years. I haven't ruled that out entirely. But water-skiing, those days are over."

Ginsburg, who was appointed by President Clinton in 1993, said she intended to stay on the court "as long as I can do the job full steam and that, at my age, is not predictable."

"I love my job," she added. "I thought last year I did as well as in past terms."

With the departure of Justice John Paul Stevens in 2010, Ginsburg became the leader of the court's four-member liberal wing, a role she seems to enjoy. "I am now the most senior justice when we divide 5-4 with the usual suspects," she said.

The last two terms, which brought major decisions on Obama's health-care law, race and same-sex marriage, were, she said, "heady, exhausting, challenging."

She was especially critical of the voting-rights decision and the part of the ruling upholding the health-care law that nonetheless said it could not be justified under Congress' power to regulate interstate commerce.

In general, she said: "If it's measured in terms of readiness to overturn legislation, this is one of the most activist courts in history."

The next term, which begins Oct. 7, is also likely to produce major decisions, she said, pointing at piles of briefs in cases concerning campaign-contribution limits and affirmative action.

Monitoring her health

The recent voting-rights decision, *Shelby County v. Holder*, also invited Congress to enact new legislation. But Ginsburg, who dissented, did not sound optimistic.

"The Voting Rights Act passed by overwhelming majorities," she said of its reauthorization in 2006, "but this Congress I don't think is equipped to do anything about it."

Asked if she was disappointed by the almost immediate tightening of voting laws in Texas and North Carolina after the decision, she chose a different word: “disillusioned.”

The flaw in the court’s decision, she said, was to conclude from the nation’s progress in protecting minority voters that the law was no longer needed. She repeated a line from her dissent: “It is like throwing away your umbrella in a rainstorm because you are not getting wet.”

Chief Justice John Roberts wrote the majority opinion, and he quoted extensively from a 2009 decision that had, temporarily as it turned out, let the heart of the Voting Rights Act survive. Eight members of the court, including Ginsburg, had signed the earlier decision.

On Friday, she said she did not regret her earlier vote, as the result in the 2009 case was correct. But she said she should have distanced herself from the majority opinion’s language. “If you think it’s going to do real damage, you don’t sign on to it,” she said. “I was mistaken in that case.”

She has always been “a night person,” she said, but she has worked even later into the small hours since her husband, Martin Ginsburg, a tax lawyer, chef and wit, died in 2010. Since then, she said, there is no one to call her to bed and turn out the lights.

She works out twice a week with a trainer and said her doctors at the National Institutes of Health (NIH) say she is in fine health.

“Ever since my colorectal cancer in 1999, I have been followed by the NIH,” she said. “That was very lucky for me because they detected my pancreatic cancer at a very early stage” in 2009.

Less than three weeks after surgery for that second form of cancer, Ginsburg was back on the bench.

“After the pancreatic cancer, at first I went to NIH every three months, then every four months, then every six months,” she said. “The last time I was there they said come back in a year.”

Ginsburg said her retirement calculations would center on her health and not on who would appoint her successor, even if that new justice could tilt the balance of the court and overturn some of her landmark women’s-rights decisions that are a large part of her legacy.

“I don’t see that my majority opinions are going to be undone,” she said. “I do hope that some of my dissents will one day be the law.”