Supreme Court Justice Breyer Retirement Opens Door for First Biden Administration Nomination

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Early Tuesday afternoon, long-time U.S. Supreme Court Justice Stephen Breyer announced his retirement from the Court following conclusion of the Court's 2022 term this October. Justice Breyer, 83, was appointed to the Court in 1994 by President Clinton following a 14-year stint as a judge on the U.S. Court of Appeals for the First Circuit, which covers Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico.

Breyer is – by far – the oldest current member of the Court, and long has been a stable of the liberal bloc of justices comprising the nine-member panel. Along with Justices Elena Kagan and Sonia Sotomayor, the liberal-leaning justices have been in a distinct minority in the increasingly conservative-leaning court. Consequently, Justice Breyer's retirement likely will not change the current makeup of the Court, but it will allow President Biden to make his first nomination prior to the midterm elections later this year. President Biden previously has stated publicly that he intends to nominate the first African American, female justice to the Court. White House Press Secretary Jen Psaki confirmed Tuesday afternoon that President Biden's plans on that front remain unchanged.

Currently, the U.S. Senate is composed of 50 Republicans, 48 Democrats, and two Independents, both of whom caucus with the Democratic party. Vice-President Kamala Harris serves as the tiebreaking vote in the event of a 50-50 tie, including in instances related to confirmation of Federal judges. Due to a relaxation of certain confirmation rules over the past few years, a simple majority now is all that is needed in the Senate to confirm a nomination; consequently, any nominee has the potential to be confirmed without a single Republican vote. Potential nominees on President Biden's radar may include, among others, Seventh Circuit Court of Appeals judge Candace Jackson-Akiwumi, California Supreme Court Justice Leondra Kruger, and D.C. Circuit Court of Appeals Judge Ketanji Brown Jackson.