



ABC's Weekly Federal Legislative Update September 21, 2020

Introduction

Congress faces a busy week as Republic efforts to replace Supreme Court Justice Ruth Bader Ginsburg complicate an already hectic September. Congress must pass before October 1, a measure to fund the federal government. It seems that an agreement has already been worked out to pass a continuing resolution which will fund the federal government until December 11 however there are still concerns about certain aspects of the legislation including farm aid and food assistance for children. Democrats have pledged to keep funding discussions separate from other political issues such as moving forward with a Supreme Court nomination during a highly contested Presidential election. Below is news from Washington, D.C.

Administration

Renewable Fuel Standard

Last week, EPA denied the vast majority of gap year small refinery waiver requests which had been submitted as result of the 10th Circuit Court ruling in January.

Marc Heller of [Greenwire](#) wrote on September 14, "EPA today said it's denying requests from small petroleum refineries to retroactively waive biofuel-blending requirements going back as far as 2011.

"The agency touted its decision as helping farmers and said it was following "the rule of law" in telling refiners the so-called gap year exemptions will all be refused.

"More than 40 such petitions have come to EPA since the 10th U.S. Circuit Court of Appeals in January said the agency can only grant extensions of existing exemptions, not new ones.

"In effect, the court ruling spurred companies that hadn't received exemptions in recent years to apply for them in years past, to meet the ruling's standard. Biofuel groups have strongly objected, along with pro-biofuel lawmakers such as Senator Chuck Grassley (R-IA).

"In a news release, EPA said it was denying the petitions so the renewable fuel standard program can continue to meet the minimum annual volume requirement of 15 billion gallons set out in the Clean Air Act.

"This decision follows President Trump's promise to promote domestic biofuel production, support our nation's farmers, and in turn strengthen our energy independence," EPA Administrator Andrew Wheeler said in a statement.

"Time and again, EPA has demonstrated through action its commitment to our nation's farmers," the agency said in a statement.

"The gap year petitions covered the compliance years of 2011 to 2018. Other petitions for exemptions, such as for economic hardship this year, are still pending.

"Fallout from the court opinion continues to unfold. While it covered only three refineries in Western states, the reasoning behind the decision could greatly reduce the number of exemptions refineries can receive nationally. Two companies, CVR Energy and HollyFrontier, have asked the Supreme Court to review the case."

Congress

Supreme Court Nomination

Late on Friday, September 18, Supreme Court Justice, Ruth Bader Ginsberg died due to complications from cancer. She was the oldest member of the court and one of its most liberal. This sets up a possible Supreme Court nomination and conformation battle in the middle of a Presidential election. This is also occurring after Senate Majority Leader McConnell had said in 2016 that a nomination and confirmation process should not occur so close to the election. The stage is set for a significant battle.

On September 19, Manuel Quinones of [Greenwire](#) reported, "Senate Majority Leader Mitch McConnell (R-KY) is promising a vote on President Trump's nominee to replace the late Justice Ruth Bader Ginsburg, but some GOP lawmakers may end up thwarting the party's attempt to seat a third Trump justice.

"Lawmakers focused on expressing their condolences but could not avoid weighing in on the coming confirmation battle.

"And McConnell wasted no time last night, announcing: "President Trump's nominee will receive a vote on the floor of the United States Senate."

"Trump, after praising Ginsburg's "amazing life" upon hearing the news of her death, this morning began his public pressure campaign on GOP senators.

"We were put in this position of power and importance to make decisions for the people who so proudly elected us, the most important of which has long been considered to be the selection of United States Supreme Court Justices," Trump said.

"But Senate Minority Leader Chuck Schumer (D-NY), echoing McConnell's exact phrasing following Justice Antonin Scalia's February 2016 death, said, "The American people should have a voice in the selection of their next Supreme Court Justice. Therefore, this vacancy should not be filled until we have a new president."

"Following Scalia's death, McConnell and the Senate GOP majority blocked President Obama's last Supreme Court nominee, appeals court Judge Merrick Garland, saying the American people should decide the court's fate in the upcoming presidential election.

"Senate Appropriations Committee ranking member Patrick Leahy (D-VT) last night urged McConnell and Judiciary Chairman Lindsey Graham (R-SC) to treat Trump the same.

"They must exhibit a shred of integrity and recognize that abandoning their word now, and breaking all precedents by ramming a nominee through — most likely after the election — would cause the nation tremendous pain," said Leahy.

"In a statement last night, McConnell defended his reasoning for blocking Garland and said that case involved a lame-duck president of a different party. He said America then chose a GOP Senate to keep a check on Obama.

"Americans reelected our majority in 2016 and expanded it in 2018 because we pledged to work with President Trump and support his agenda, particularly his outstanding appointments to the federal judiciary," McConnell said last night. "Once again, we will keep our promise."

Possible GOP holdouts

"The question is whether a Supreme Court vote this year will succeed. Republicans have a 53-member majority in the Senate, but four GOP lawmakers opposing the president's nominee or the process could scuttle the confirmation. Vice President Mike Pence would be able to break a tie.

"Several GOP lawmakers have said in the past that senators should wait until after an election if a Supreme Court vacancy happens this late in the process, but with intense pressure from the White House and McConnell, many of those promises may likely fade.

"Democratic political action committee American Bridge 21st Century is trumpeting Colorado Republican Senator Cory Gardner's comments in 2016 against considering Garland. Gardner is in one of this year's toughest races.

“Other Republican senators to watch include Energy and Natural Resources Chairwoman Lisa Murkowski of Alaska, Mitt Romney of Utah and Susan Collins of Maine. Collins, like Gardner, is also facing a tough reelection battle.

“Murkowski told Alaska Public Media yesterday — just hours before Ginsburg's death was announced — that she would not agree to a Trump appointment before the inauguration.

"I would not vote to confirm a Supreme Court nominee. We are 50-some days away from an election," Murkowski said.

“Collins — whose race is a top focus for Democrats for her support of Justice Brett Kavanaugh — told *The New York Times* in recent weeks she would not vote to confirm a nominee before the election.

"I think that's too close, I really do," Collins said. She said she would also not vote to confirm a Trump pick during the lame duck if he loses the election.

Outlook

“The timeline for considering the president's nominee is uncertain. It took Trump roughly two weeks to announce a replacement for retiring Justice Anthony Kennedy. It has taken longer with other vacancies.

“It then usually takes more than a month before confirmation hearings can begin. The Senate is already set to recess early next month so lawmakers can campaign for races that will decide the balance of power.

“The confirmation hearings and vote, as a result, will almost certainly happen during the lame duck, when members will likely know their political fate.

“Changes in Senate rules give the minority party little leverage to block Trump's pick, but an acrimonious fight lies ahead.

"Let me be clear: The voters should pick a president, and that president should select a successor to Justice Ginsburg," Democratic presidential nominee Joe Biden said.

“But in his tweet this morning, Trump said, "We have this obligation, without delay!"

House Agenda

The following story contains an update on House plans for appropriations and the latest COVID 19 package.

Greenwire reporters George Cahlink & Emma Dumain published on September 15, “House Speaker Nancy Pelosi said today she'll keep the House in session this fall until

lawmakers can reach a deal on a pandemic aid package even as negotiations between the parties have faltered in recent weeks.

"We are committed to staying here until we have an agreement — an agreement that meets the needs of the American people. We're optimistic that the White House, at least, will understand that we have to do some things," the California Democrat said in an interview on CNBC. Pelosi made similar comments in a call with the House Democratic caucus this morning.

"The House had been widely expected to leave for the campaign trail at the end of this month, after approving stopgap spending legislation to avert a government shutdown when the new fiscal year begins Oct. 1.

"House Majority Leader Steny Hoyer (D-Md.) told reporters today a continuing resolution to provide federal funding into the new fiscal year would be on the floor next week. It's expected to run beyond the elections.

"Pelosi has resisted calls to compromise with the GOP on a narrower COVID-19 package, previously warning Democrats not to be a "cheap date."

"The speaker, however, has faced increased pressure, including from within her own party, to not adjourn for the elections until there is an accord on the next round of virus legislation. Vulnerable lawmakers worry about a backlash at the polls.

"Democrats have called for a multitrillion-dollar package focused on testing and state and local aid, while the GOP wants a far narrower bill aimed at targeted relief for businesses.

"House Democratic Caucus Chairman Hakeem Jeffries (D-NY) said this morning that Democrats were united behind the call to stay in session.

"The Caucus remains unified, committed to get something done that's meaningful and to remaining in town as long as it takes for that to happen," he said.

"Also this morning, nearly two dozen Democrats and Republicans in the 50-member House Problem Solvers Caucus gathered outside the Capitol to unveil its "March to Common Ground" coronavirus relief plan, a \$1.5 trillion package that would, among other things, provide another round of stimulus checks and boost unemployment insurance.

"The centrist lawmakers, many of whom are in tough reelection fights, underscored the significance of their blueprint in that it represents the first comprehensive, bipartisan agreement as congressional leaders and the administration remain deadlocked.

"We do not step into the role of the final negotiators on this package. That is left to our leadership, that is left to the Senate, the House and the White House," said Problem Solvers Caucus Co-chairman Tom Reed (R-NY).

"But what we wanted to demonstrate is that it can be done. ... These members of Congress are showing that Congress is full of men and women that want to do the people's work," he said.

"They urged their leadership to consider the package as at least a starting point, saying in no uncertain terms that failure to act is not an option — practically, in terms of helping people who are struggling, and politically, in terms of members keeping their jobs.

"I've had some horrific wildfires in my district, and that's occupying people right now," said Representative Kurt Schrader (D-Ore.). "Prior to that, solving the COVID issue, showing that we care, that was the most important issue on everybody's minds."

"Schrader said of the other items on the House legislative calendar, including energy legislation: "All this other stuff we're passing right now, that's good stuff, but secondary. I hope our leadership takes a hard look at what we're doing."

[Pandemic: 2009 Stimulus Inspires Democrat's Green Recovery Plan](#)

Democrats are looking to the next session of Congress and what might be possible should they take control of the White House, the Senate or both. The following story discusses the experience of passing and implementing the 2009 Stimulus package and how it may influence additional COVID 19 recovery packages.

Nick Sobczyk of [E&E Daily](#) wrote on September 17, "Energy and Commerce Democrats pursued their quest yesterday for a green recovery from COVID-19, but if their subcommittee hearing was any indication, they're not likely to get where they want to go without an election win in November.

"Their inspiration: the 2009 American Recovery and Reinvestment Act — the stimulus passed under the Obama administration during the last economic crisis — which made massive investments in clean energy that reverberate today, with renewable energy cheaper and more widespread than ever.

"Congress has an opportunity to replicate that measure as it plots a path to recovery from the pandemic, Subcommittee on Environment and Climate Change Chairman Paul Tonko (D-NY.) said yesterday.

"While the need for action is as urgent as ever, we can be confident that this approach can have a meaningful impact," Tonko said. "Much of the clean energy progress made in the past decade can trace his origins back to the historic investments of the Recovery Act."

“He added, "This isn't some unrealistic dream."

“But the Republican response yesterday — and the ongoing pandemic recovery stalemate — showed that those green visions will remain on the sidelines unless Democrats are able to take control of the White House and Senate in November.

“The House passed a massive green infrastructure bill over the summer, [H.R. 2](#), that's going nowhere fast in the Senate. And while both chambers have proposed energy bills that could be worked into law in the coming months, it was hardly mentioned at the hearing, despite the fact that the House package contains plenty of energy innovation legislation passed through Energy and Commerce.

“That's not to mention the fact that Congress has been at loggerheads for months over COVID-19 aid, even without proposals for greening infrastructure and the power sector complicating negotiations.

"Well, it was only a matter of time," said Representative David McKinley (R-WV), referring to Democratic proposals to promote clean energy through the COVID-19 recovery. "The Democratic leadership simply can't let a crisis go to waste."

“Republicans also pointed to an additional well-trodden issue: the country's reliance on imports for the critical minerals necessary for renewables and battery production.

"We are 100% net import reliant on some minerals used in many electronics — batteries, solar panels and windmills," said full committee ranking member Greg Walden (R-OR). "If the vision is to power the nation on these technologies alone, we could be in serious trouble if we don't deal with this supply chain issue."

“Michelle Michot Foss, a fellow in energy and minerals at Rice University's Baker Institute for Public Policy, told the panel that if the United States accelerates deployment of technologies it doesn't produce domestically, it risks "shifting our emissions abroad."

“Still, the global market for clean technology has boomed over the last decade, said Devashree Saha, a senior associate at the World Resources Institute.

"The U.S. advanced energy industry generated \$238 billion in revenues in 2018," Saha told the panel. "This is only about 15% of the global total, but the sector's 11% growth in 2018 was almost four times the growth of the U.S. economy."

“Plus, she added, with sky-high unemployment, clean energy investments "can create more jobs than a similar level of investment in carbon-intensive sectors of the U.S. economy."

"\$1 million spent on clean energy generates about seven to eight full-time equivalent jobs per year," she said. "A similar level of investment in fossil fuel technology generates only two to three jobs."

"Democrats were generally optimistic about the prospects of funding clean energy and infrastructure through pandemic recovery, with the full committee chairman, Representative Frank Pallone (D-NJ), saying Congress has "no choice" but to tackle the public health, economic and climate crises together.

"But Representative Jerry McNerney (D-CA) noted that there were few signs of agreement, as has been the case throughout the series of climate hearings held in Energy and Commerce during the 116th Congress.

"Watching the members' questions, I observed that both sides are talking past each other," McNerney said during the hearing. "And that's unfortunate."

Other

[Obituary: Justice Ruth Bader Ginsburg Dies at 87](#)

On September 18, Pamela King of Greenwire submitted, "Ruth Bader Ginsburg, a champion of women's rights and one of the Supreme Court's most liberal justices, has died. She was 87.

"Ginsburg, who had been the court's eldest justice, had suffered from several health problems in recent years, including a recent recurrence of cancer in her liver. She died "surrounded by her family at her home in Washington, D.C., due to complications of metastatic pancreas cancer," the Supreme Court said in statement released today.

Former President Clinton appointed Ginsburg to the nation's highest bench in 1993. She was the second woman to serve on the court.

"Her death leaves an opening on the Supreme Court, which President Trump could fill. Trump has already placed Justices Neil Gorsuch and Brett Kavanaugh on the bench, and a third pick would more deeply entrench the court's conservative majority. The president recently released an updated list of prospective Supreme Court justices.

"Such a shift could affect how the court comes down on pending challenges to the Trump administration's environmental agenda. Trump's efforts to roll back Obama-era vehicle emissions, water permitting and other standards could eventually reach the justices.

"Best known for her advocacy for equality between the sexes, Ginsburg was also thought of as a reliable vote for environmental interests that argued before the high court. In practice, her jurisprudence was much more complex.

“In the landmark climate case *American Electric Power Co. Inc. v. Connecticut*, Ginsburg led the court's unanimous opinion that said private entities and states could not sue power companies for their contributions to climate change under federal common law. The 2011 case followed the court's 5-4 decision — Ginsburg was in the majority — in *Massachusetts v. EPA*, which said that the federal government has the authority to regulate greenhouse gas emissions as "air pollutants" under the Clean Air Act. "The Act itself thus provides a means to seek limits on emissions of carbon dioxide from domestic power plants — the same relief the plaintiffs seek by invoking federal common law," Ginsburg wrote in *American Electric Power*.

"We see no room for a parallel track."

“Similar questions have come into play in a recent set of lawsuits from cities, counties and one state that are attempting to get big oil firms to pay for the local impacts of climate change. Attorneys for the municipalities have argued that their nuisance claims can move forward in state court.

“Ginsburg also joined the court's liberal wing in dissents in a pair of landmark Clean Water Act cases. Those minority opinions in *Solid Waste Agency of Northern Cook County v. Army Corps of Engineers* and *Rapanos v. United States* expressed support for a more expansive definition of jurisdictional waters under the Clean Water Act.

“Before her appointment to the Supreme Court, Ginsburg served on the U.S. Court of Appeals for the District of Columbia Circuit after she was appointed by former President Carter.

“Ginsburg started her career in academia. She taught at Rutgers University and her alma mater Columbia Law School, where she transferred from Harvard Law School after her husband, Martin Ginsburg, took a job in New York City.

“Martin Ginsburg died in 2010. The couple met as undergraduate students at Cornell University and had two children, James and Jane.”