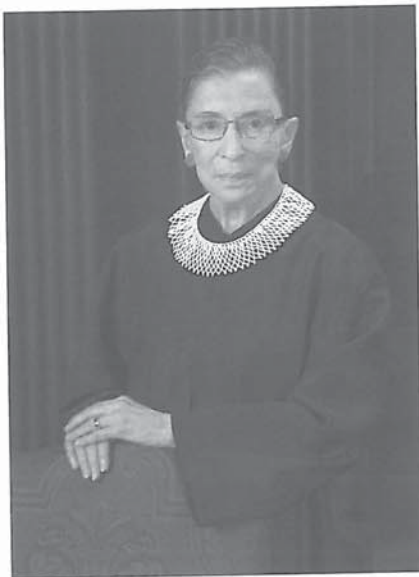


Ruth Bader Ginsburg

1993–



Source: Collection of the Supreme Court of the United States

RUTH BADER GINSBURG was born Joan Ruth Bader on March 15, 1933, in Brooklyn, New York. Her parents, Nathan Bader and Celia Amster Bader, were Jewish Americans whose families had immigrated to the United States—Celia's from central Europe four months before she was born and Nathan's from Russia when he was thirteen. An older sister, Marilyn, died at the age of eight, so Ruth Bader grew up as an only child, in the Flatbush section of Brooklyn. Her father worked first as a furrier and later as a haberdasher.

Celia Bader played a critical role in her daughter's intellectual development. She took Ruth on frequent trips to the library and saved money to enable her daughter to attend college. Ruth excelled in high school,

winning scholarships that would pay her way through college without dipping deeply into her mother's savings. Sadly, Celia struggled with cancer throughout Ruth's high school years and died the day before graduation.

Ruth Bader continued to fulfill her mother's hopes in college at Cornell University, where she was elected to Phi Beta Kappa and graduated first among the women in her class. At Cornell she met Martin Ginsburg, whom she married following her graduation in 1954. Together they decided to pursue careers in the law.

Ruth Bader Ginsburg entered Harvard Law School a year behind her husband, following two years in Fort Sill, Oklahoma, where Martin served in the army. Their daughter, Jane, was still a baby, and the two law students

shared child care duties and household chores. Harvard Law School was less than welcoming to the nine women in its class of 1959, providing no room for them in its main dormitories, and no women's bathroom in one of the two buildings in which classes were taught. Despite the chilly atmosphere and the extra demands of her young family, Ginsburg excelled in her classes and won a spot on the law review.

During Ruth's second year at Harvard, Martin Ginsburg was diagnosed with cancer. While he underwent massive surgery and radical radiation treatments for a condition doctors told him few had ever survived, Ruth covered her husband's classes as well as her own, copying notes for him and typing his third-year paper. Martin recovered and was able to complete his course work and graduate on time. When he accepted a job as an associate with a New York City law firm, Ruth transferred to Columbia Law School so that the family could remain together. There, she again made law review and graduated tied for first in her class.

Although she had superior academic credentials, Ginsburg received no job offers from New York law firms, nor was she able to obtain a clerkship interview with a Supreme Court justice. As she has recalled, her status as "a woman, a Jew, and a mother to boot" was "a bit much" for prospective employers in those days. One enlightened district court judge in New York, Edmund L. Palmieri, finally hired Ginsburg as a law clerk. Twenty years later, he rated her as among the best clerks he had ever employed.

Following her clerkship, Ginsburg took part in a comparative law project sponsored by Columbia Law School. As the prime part of her work for the project, she coauthored a book on judicial procedure in Sweden. After almost daily tutoring in Swedish for several months, she traveled to Sweden to observe Swedish courts in operation. In years immediately prior to her Supreme Court appointment, Ginsburg spent some of her spare time assisting in the translation of the Swedish Code of Judicial Procedure into English.

In 1963, she became the second woman to join the law faculty of Rutgers University in New Jersey. While at Rutgers, Ginsburg became pregnant with her second child, James. Worried about retaining her nontenured position, she hid her pregnancy during the school year by wearing clothes borrowed from her ever supportive, one-size-larger mother-in-law.

Her personal encounter with the special obstacles faced by women attempting to combine career and family coincided with a professional awakening. In the early 1960s, prompted in part by her reading of Simone de Beauvoir's *The Second Sex*, Ginsburg recognized that the second-class treatment she had experienced was a symptom of a larger problem—social conditions that denied women choices and opportunities open to men. The law, she believed, should aid in redressing these inequities. While continuing to teach at Rutgers, Ginsburg assisted the New Jersey affiliate of the American Civil Liberties Union (ACLU) in launching sex discrimination cases, prime among them, cases on behalf of school teachers who were forced to forfeit their jobs when they became pregnant. Asked by her Rutgers students to teach a course on sex-based discrimination, Ginsburg was surprised to discover how little had been written on the subject.

The Supreme Court had upheld several laws that treated women differently from men—for example, by preventing women from working as bartenders or lawyers under the rationale that women, as members of "the gentler sex," were in need of special protection from life's hardships. Ginsburg believed that such sex stereotyping, although ostensibly benign, demeaned women and unfairly limited their opportunities. In her view, the equal protection principle stated in the Fourteenth Amendment to the U.S. Constitution, which prohibits discrimination based on race, should bar gender-based discrimination as well. But in the 1960s and early 1970s, Ginsburg found that promoting this viewpoint was an uphill battle. As she recalled at her confirmation hearings: "Race discrimination was immediately perceived as evil, odious, and intolerable. But the response I got when I talked about sex-based discrimination was 'What are you talking about? Women are treated ever so much better than men.' I was talking to an audience that thought . . . I was somehow critical about the way they treated their wives . . . [and] their daughters."

Changing these views—and the law that reflected them—could not be accomplished overnight. Victory would require persuading a majority of the Supreme Court that sex-based legal classifications should be scrutinized much more closely by the courts than other government choices. Ginsburg, like Thurgood Marshall in his battle against racial discrimination, recognized that a cautious, incremental approach would be the

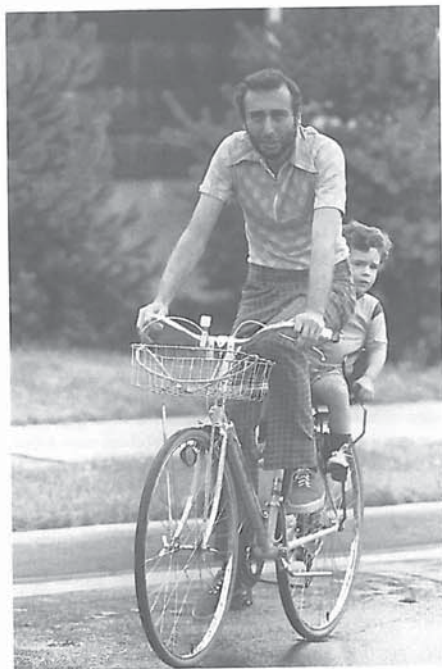
surest method of achieving enduring change in the law. In her words, "[t]he courts needed to be educated. That requires patience: it may mean holding back a case until the way has been paved for it."

Ginsburg launched her campaign by joining forces with the ACLU's national office. She was the principal author of the ACLU's brief in a key Supreme Court sex discrimination case, *Reed v. Reed* (1971), which struck down a state law that preferred men over women as administrators of decedents' estates. However, because the Court reached its decision without explicitly adopting a heightened standard of review, the ruling did not guarantee similar results in other cases.

The ACLU established a Women's Rights Project in 1972 and placed Ginsburg at the helm. Over the next eight years, she sought to persuade a majority of the

Supreme Court that sex-based legal distinctions should trigger some form of heightened judicial scrutiny.

To execute this strategy, Ginsburg selected cases that would allow her to make her point on behalf of women's rights without appearing strident or radical. Her objective was to convince the Court that gender-based stereotyping harmed not only women but all of society. Often the plaintiffs in Ginsburg's cases were men, and the well-being of families was at stake. For example, in *Weinberger v. Wiesenfeld* (1975), a widower whose wife had died in childbirth wanted to stay home to take care of his infant son. If his wife had survived him, she would have been entitled to benefits based on the Social Security taxes withheld from his salary; however, Wiesenfeld could not receive survivor benefits based on her Social Security payments. In effect, his wife had paid



Stephen Wiesenfeld and his son, Jason, became the center of an important Supreme Court case, *Weinberger v. Wiesenfeld* (1975). After the death of his wife, who had been the principal wage-earner in the family, Wiesenfeld applied for survivors' benefits for himself and his son. A provision of the Social Security Act stated that a widow with children was entitled to benefits based on the earnings of her deceased husband, but a widower in similar circumstances gained no benefits based on his deceased wife's earnings. Arguing on behalf of Wiesenfeld, Ruth Bader Ginsburg questioned the law's assumption that husbands are always the wage-earners and wives the dependent caregivers. In a unanimous decision, the Court struck down the challenged provision as unconstitutional.

Source: AP Photo

her Social Security taxes at the same rate as a man but had not obtained an equivalent measure of protection for her family. This discrepancy arose, Ginsburg argued, from society's inaccurate—and damaging—preconception that husbands are always the wage-earners and wives the dependent caregivers. A unanimous Supreme Court held the exclusion of fathers like Wiesenfeld unconstitutional, although again without explicitly applying a heightened standard of review.

Between 1972 and 1978, Ginsburg argued six cases before the Court involving sex-role stereotyping and won five. In *Craig v. Boren* (1976), the Court finally accepted Ginsburg's view (expressed in a "friend-of-the-court" brief) that gender-based legal distinctions deserved heightened scrutiny.

In 1972, Ginsburg left Rutgers to teach at Columbia Law School, where she became the first tenured woman law professor on that faculty. Her distinguished teaching career and ACLU achievements won her a national reputation and prompted President Jimmy Carter to appoint her to the U.S. Court of Appeals for the District of Columbia Circuit in 1980. Martin Ginsburg moved with his wife to Washington, D.C., leaving his New York tax practice and chair at Columbia Law School to become a professor at Georgetown University Law Center.

As a judge, Ginsburg garnered respect with her clear thinking, careful reasoning, and assiduous preparation for every case. Her prompt drafting of each opinion she was assigned and her scrupulous attention to the details of each case stemmed from her appreciation that the court's rulings would change the lives or practices of those affected by judicial decisions. This sensitivity to the real-world effects of her decisions led her to take her law clerks on periodic tours of the local prisons in which some of the defendants in the court's criminal cases were incarcerated.

While serving on the D.C. Circuit, Ginsburg dissented in a challenge to a statute allowing the judiciary to appoint independent counsel to investigate allegations of wrongdoing by senior executive officers. A panel of the appeals court struck down the law as an unconstitutional infringement of the separation of powers, reasoning that only the executive branch is empowered to appoint prosecutors. Ginsburg rejected this approach as excessively formalistic. She found the majority's holding ironic, because Congress's purpose in enacting the independent counsel law was to maintain the balance of power among

the various branches of government by curbing abuses of executive authority. She recognized the dangers of a prosecutor with a single case to pursue, but she believed the choice was within the power of Congress to make. In *Morrison v. Olson* (1988), the Supreme Court upheld the constitutionality of the statute.

The resignation of Justice Byron White in the spring of 1993 afforded President Bill Clinton the opportunity to become the first Democratic president in twenty-six years to make a Supreme Court appointment. He announced that he was looking for a nominee with "a fine mind, good judgment, wide experience in the law and in the problems of real people, and somebody with a big heart." Calling Ginsburg "the Thurgood Marshall of gender equality law," he concluded that she possessed the requisite intellectual and emotional stature for the job. The Senate voted 97–3 to confirm Ginsburg's nomination, and she took the oath of office on August 10, 1993.

During her tenure on the Court, Ginsburg has consolidated her reputation as a collegial pragmatist with a keen concern for the effects of judicial decision-making on the lives of real people. Her long-held conviction that gender discrimination deserves serious scrutiny under the Fourteenth Amendment found reaffirmation in *United States v. Virginia* (1996), in which the Court held that Virginia's refusal to admit women to the Virginia Military Institute (VMI) was unconstitutional. Ginsburg wrote for the majority that "[n]either federal nor state government acts compatibly with equal protection when a law or official policy denies to women, simply because they are women, full citizenship stature—equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities." Building on *Craig v. Boren*'s requirement that gender discrimination receive heightened scrutiny under the constitution, Ginsburg wrote for the majority that only an "exceedingly persuasive justification" will pass constitutional muster. Ginsburg dismissed Virginia's argument that VMI's rigorous training program was fundamentally unsuited for women, calling it "the kind of 'self-fulfilling prophecy' once routinely used to deny rights or opportunities" to women.

Another major gender discrimination case offered Ginsburg the opportunity to express her concern for the real-world effects of judicial decisions, as well as her characteristic deference to the role of other branches of government. Lilly Ledbetter, the lone woman working alongside 15 male supervisors at a Goodyear Tire



In 2007 the Supreme Court ruled against Lilly Ledbetter (left) in her lawsuit seeking compensation for the lower pay she had received as compared to male co-workers through nearly twenty years of employment at Goodyear Tire and Rubber Company because she hadn't met the Title VII requirement to file suit within 180 days of receiving her first lower paycheck. Ruth Bader Ginsburg's dissent noted that many employees are not aware of sex discrimination in regards to pay when it occurs because employers commonly do not disclose this information to employees. Shortly after taking office, President Barack Obama signed a bill overriding the Court's decision.

Source: KEVIN DIETSCHHUPF / London

factory, discovered as she neared retirement that she was earning less than all her male co-workers, even those with less seniority, because she had been receiving lower raises throughout her almost 20-year career. In *Ledbetter v. Goodyear Tire and Rubber Company* (2007), the Court barred Ledbetter from suing her employer under Title VII of the Civil Rights Act of 1964, the nation's principal anti-discrimination in employment law, because she had not filed a complaint within 180 days of each and every unfavorable pay-setting decision. In a rare move highlighting her strong disagreement with the decision, Ginsburg read a summary of her vigorous dissent from the bench. In Ginsburg's view, "Title VII was meant to govern real-world employment practices, and that world is what the court today ignores." The majority's "cramped" and "parsimonious" interpretation of Title VII failed to take account of the insidious

nature of pay discrimination, which occurs in small increments and is kept under wraps by employers, and of the tendency of workers "trying to succeed in a non-traditional environment" to avoid "making waves." In Ginsburg's view, each instance in which Ledbetter's paycheck reflected an amount lower than that of her similarly situated male colleagues constituted a separate act of discrimination. Ginsburg concluded her dissent by inviting Congress to take action to correct the Court's result. Within two years, Congress did just that. On January 29, 2009, President Barack Obama signed into law the Lilly Ledbetter Fair Pay Act, which allows an employee to file a complaint under Title VII within 180 days of receiving any discriminatory paycheck.

Recent years have presented Ginsburg with personal setbacks that she has met with characteristic resilience. In 1999, she underwent surgery, chemotherapy, and

radiation treatments for colorectal cancer; she did not miss a day in Court. Pancreatic cancer, caught in its early stages in 2009, required another surgery. Martin Ginsburg, her devoted husband and intellectual partner, died of cancer in 2010. The justice has said that her work on the Court has helped her cope with her loss. She was joined by two other female justices in 2009 and 2010, which she called an "exhilarating development."

She maintains an energetic speaking schedule and is a consistently active questioner at oral argument.

Ginsburg is known as a careful writer and exacting editor with a keen eye for detail. Her soft voice and reserved manner hide great perceptiveness and a warm interest in people. She is an opera devotee who has appeared in full period costume—complete with wig and fan—as an extra in a Washington Opera production.