



## Why Obama's SCOTUS nominee threatens the GOP

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You can make the argument that by nominating an oldish, moderate, well-respected judge to the Supreme Court that Barack Obama has outsmarted the Republicans, making those opposing him in the Senate look small, petty and ungenerous for refusing to consider or, in most cases, even talk to nominee Merrick Garland.

But that's not the argument I'd make.

I'd say the Republicans outsmarted themselves. I'd say that by inventing the monster that is Donald Trump — they first spent years branding Obama as the radical “other” (I'm talking to you, Mike Coffman) and then gasped in horror when voters took seriously the one presidential candidate to run with the concept — they practically invited Obama to make this move.

Yes, Obama was smart enough to figure it out. But how hard was it? It's not like picking a winning NCAA bracket.

He nominates a moderate and dares Republicans to bet that Trump loses the nomination or, if Trump wins, that he would somehow then beat Hillary Clinton, and that if he did beat her, he could be trusted to nominate someone other than either his bankruptcy or divorce lawyer.

We know what happens if Clinton wins — she nominates a 40-something liberal who spends 40 years on the court doing her best Ruth Bader Ginsburg imitation while Clinton spends the next eight years whispering that she might nominate Obama next.

And what about Trump?

There are many scenarios, one more hilarious than the next until you actually remember what the stakes are. One, from Nate Silver, is that Trump runs to the bipartisan middle in order to attract those Reagan-style Democrats who have remained Democrats and, if successful, he gets his first shot to show off his Trumpian deal-making skills with his Supreme Court pick. I can see it now, the winner's name alongside Trump's in neon, with the runner-up guaranteed a lifetime supply of Trump steaks.

There is another, more likely scenario: That Clinton runs against Trump on the basis of whether you'd trust this pick (or any number of other critical tasks) to someone who predicts riots if he gets robbed of the nomination, to someone who would refuse immigrants on the basis of their religion, to someone who wants to reverse the libel laws so he can go all Alien and Sedition Acts on unfriendly reporters, to someone who has said (and later unsaid) he would order soldiers to employ torture, to someone who would target suspected terrorists' children, to someone who promises to pay the legal fees for anyone who "knocks the crap" out of a protester, to someone who, well, the list is endless.

And there's this scenario: At some point, if Trump is the nominee, Republicans will be forced to decide whether to support him. Michael Gerson has a great line in his *Washington Post* column saying that for Republicans who accommodate Trump, "it is not just a choice; it is a verdict." So, let's consider those Republicans who, like Nebraska Sen. Ben Sasse, say they won't vote for Trump. How do they then make the argument that they are turning down the best offer they're likely to see from a Democratic president with the hope that the man they rejected would do better?

You can see the quandary Republicans face. Senate Majority Leader Mitch McConnell, who came up with the idea that they wouldn't even allow a hearing for any Obama nominee, is sticking to his determination that we should "let the people decide," as if they hadn't already decided when they elected Obama twice. At this point, the polls show that a healthy majority think Obama's pick should get a hearing. And maybe more problematic for Republicans, I could swear that Obama's approval rating numbers are growing with each Trumpian primary victory.

As Cato Institute's Trevor Burrus wrote in *Time*, the problem with letting the people decide is that "if there's one thing we've learned this election year, it's that the 'people' are terrifying."

The conventional wisdom held that Obama, seeing that he had no chance to get his nominee through the Senate, would go with someone to please the base, playing to the women's vote, or the Latino vote or the black vote or the Bernie vote. But, of course, that would have meant nominating someone to go to battle without a viable exit strategy, and who would take on that job?

But Garland has a chance. He has the resume. He has a list of Republicans, starting with Orrin Hatch, who have praised him. He has a few liberal groups who have expressed their disappointment with him. He has people calling him a moderate who have no idea what kind of

Supreme Court justice he'd actually be, although some on the right are already calling him a gun grabber. But mostly what Garland has going for him is the prospect of Republicans nominating Trump in July and the fear of a Trump disaster come November.

The closer Trump comes to the nomination, the more pressure there will be for McConnell to cave. Some conservatives are already advising that the Senate go through with the hearings for Garland and then wait until after the election to decide whether to take the vote. That won't happen, of course. It's too weird, even by 2016 standards. After all, you don't win an election by announcing you're hedging your bets. Unless, of course, you come to believe it's the only shot you've got.