

THE WEEK

Ted Cruz claims there is 'historical precedent' for blocking all of Hillary Clinton's Supreme Court nominees

Jeva Lange

October 27, 2016

Just days after Sen. John McCain (R-Ariz.) vowed that the Republicans in the Senate would refuse "any Supreme Court nominee" proposed by Hillary Clinton, Sen. Ted Cruz (R.-Tex.) has suggested that there is "historical precedent" for doing so.

When asked how he feels about holding a vote on Clinton's nominees, Cruz told *The Washington Post* that, "You know, I think there will be plenty of time for debate on that issue. There is certainly long historical precedent for a Supreme Court with fewer justices. I would note, just recently, that Justice Breyer observed that the vacancy is not impacting the ability of the court to do its job. That's a debate that we are going to have."

Republicans are generally split on the issue — McCain ended up walking his own comments back after he made them. "As a matter of constitutional law, the Senate is fully within its powers to let the Supreme Court die out, literally," Cato Institute legal scholar Ilya Shapiro wrote for *The Federalist*. "I'm not sure such a position is politically tenable — barring some extraordinary circumstance like overwhelming public opinion against the legitimacy of the sitting president — but it's definitely constitutional."

Cruz added: "I think for those of us who care passionately about the Constitution and Bill of Rights, who care about free speech and religious liberty and the Second Amendment, the best way to protect those rights is to win on Election Day so that we see strong conservatives nominated to the court, and maintain a Republican majority in the Senate to confirm those strong conservatives. And that's what I'm fighting to do."

With eight current Supreme Court Justices, down from nine after the death of Antonin Scalia last winter, ties defer to the ruling made by the lower courts and will continue to do so until a ninth judge is confirmed.