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What the Trump Presidency Means for the Supreme Court

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The election of Donald J. Trump means that Justice Antonin Scalia's seat, vacant since he died in February, will almost certainly be filled by a conservative nominee. Back to full strength, the court will again tilt right, as it has for decades.

And with the court's two senior liberal members fairly old, that might only be the start. Justice Ruth Bader Ginsburg is 83, and Justice Stephen G. Breyer is 78.

Mr. Trump's surprising triumph vindicates Republican senators, who refused to act on President Obama's nomination of Judge Merrick B. Garland, saying the choice of a new Supreme Court justice should belong to the next president. It now belongs to Mr. Trump.

"Senate Republicans' strategy of not even considering Garland, of letting the American people decide who gets to fill Scalia's seat, worked," said Ilya Shapiro, a lawyer with the Cato Institute, a libertarian group. "Not only that, but it didn't at all hurt vulnerable senators running for re-election."

But some liberals said they hoped that even a Supreme Court dominated by conservative justices, including ones on Mr. Trump's list of 21 possible nominees vetted by conservative legal groups, could nonetheless serve as a restraint on Mr. Trump's ambitions.

"Given that many of the conservatives on his list are more in the traditional conservative mold than Trump himself, they might not simply write him a blank check when it comes to actions and policies that threaten constitutional structure," said Elizabeth Wydra, president of the Constitutional Accountability Center. "As is the case during every administration of either party, the court will inevitably be asked to step in and serve the judicial branch's role as a check on the political branches."

In the short term, the court led by Chief Justice John G. Roberts Jr. is poised to return to the status quo: closely divided, leaning right, with the crucial vote belonging to Justice Anthony M. Kennedy. "He may have been the biggest winner last night," Mr. Shapiro said of Justice Kennedy.

Mr. Trump's election represents a lost opportunity for liberals, and they are fearful of what comes next at the Supreme Court.

"On the brink of having the first liberal-leaning Supreme Court in decades, the judicial left has now been banished to the wilderness for perhaps decades more," said Barry Friedman, a law professor at New York University. "It is difficult seeing a path to anything other than a yet more conservative court for the imaginable future."

The balance of power at the Supreme Court could truly shift if there is a second vacancy while Mr. Trump is president. That appears entirely possible.

Justice Ginsburg, who was harshly critical of Mr. Trump and seemed to predict a victory for Hillary Clinton, will face second-guessing over her decision to stay on the court rather than let Mr. Obama try to appoint her successor.

Other retirements are possible, too. Justice Kennedy, the member of the court at its ideological center, is 80.

"Until some combination of Kennedy, Ginsburg, and Breyer leave, the appointment of a Scalia clone will simply return us to the prior status quo," said Sanford Levinson, a law professor at the University of Texas.

But should one of those justices retire or die during a Trump presidency, the Roberts court could enter an entirely different phase.

"In the worst case, we end up with a 7-2 conservative court, and a relatively young one at that," Professor Friedman said. "This could be a typhoon for the Supreme Court. An already very conservative jurisprudence will deepen and may broaden, encompassing areas that had long been resistant, such as abortion rights."

For now, abortion rights appear secure. In June, the court struck down a restrictive Texas abortion law by a 5-to-3 vote, with Justice Kennedy joining the court's four-member liberal wing. A new justice opposed to abortion rights would tighten that tally but not tip it.

Similarly, affirmative action seems safe in the short term. In June, the court upheld a race-conscious admissions program at the University of Texas by a 4-to-3 vote. Justice Elena Kagan was recused but would almost certainly have voted with the majority, making the effective vote 5 to 3. Here again, a single Trump appointment would not change things.

But a second Trump appointment is another matter, said Lee Epstein, a law professor and political scientist at Washington University in St. Louis. "We could see dramatic legal change," she said, "with the recent affirmative action and abortion cases on the chopping block."

Other areas of the law could be subject to faster change following a single Trump appointment. A threat to public-sector unions that ended in a deadlock in March, for instance, could soon reach the court again. This time, the challengers are likely to gain a fifth vote.

The last term's other major deadlock, over Mr. Obama's plan to spare millions of unauthorized immigrants from deportation and allow them to work legally in the United States, will almost certainly be resolved without court intervention, as Mr. Trump has vowed to take a different path on immigration.

He is also likely to use his executive authority to undo the Obama administration's approach to climate change, transgender rights and clashes between religious beliefs and contraception coverage, again effectively pulling the plug on pending challenges in the courts.

A Supreme Court dominated by conservatives is likely to further secure gun rights and continue the deregulation of campaign finance. People accused and convicted of crimes may meet a more skeptical reception at the court, particularly as Justice Scalia not infrequently surprised his critics by voting in favor of criminal defendants.

In the short term, the replacement of Justice Scalia with another conservative would return the court to a familiar dynamic, said Ms. Wydra of the Constitutional Accountability Center.

"That means conservative legal activists will once again be able to attempt aggressive changes that push the law even further to the right," she said, "but there will still be the potential for more progressive rulings like the marriage equality and abortion rulings we saw from the court even with Scalia."

The candidates on Mr. Trump's list of potential nominees are almost all sitting judges, and several served as law clerks to conservative Supreme Court justices. Many have judicial track records hostile to federal power, abortion rights and same-sex marriage.

By training and temperament, judges move more slowly than politicians, and they have different values.

"An open question is what happens when Trump realizes that the sorts of judges he's been advised to appoint would rule against him on various matters," said Mr. Shapiro of the Cato Institute.