

# NORTHWEST ARKANSAS Democrat Gazette

## **Horrors! A vacancy on the court!**

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There the president goes again, warning that if his nomination to the Supreme Court isn't considered by the Senate, the whole constitutional process will be disrupted, politics will be introduced into appointments to the high court and its decisions, and the sky will fall.

What, leave a seat on the court vacant? Never mind that the greatest of this country's chief justices, John Marshall, rendered his formative decisions (like *Marbury v. Madison*) as little more than a circuit rider. The court hasn't always had nine justices, and many's the time it simply delayed a decision while waiting for a seat to be filled.

The court marked time while Lyndon Johnson tried to get his man Abe Fortas promoted to chief justice. A seat also stayed empty for a year until Richard Nixon got Harry Blackmun appointed and confirmed. During the Reagan administration, the name of his nominee, Robert Bork, became a common term (as in He Was Borked) used when the nominees proved entirely too forthright about the legal philosophy that would guide their decisions. The game of musical chairs that followed proved almost comic until His (indecisive) Honor Anthony Kennedy was finally nominated and confirmed months later.

So let's cut the theatrics and acknowledge historical reality. To quote a couple of scholars, Josh Blackman of the South Texas College of Law and Ilya Shapiro of the Cato Institute, both of whom have filed briefs in pending Supreme Court cases, "today's court is more than capable of doing its work with eight justices."