



Not giving Merrick Garland a hearing is the honest thing to do

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Regardless whether Senate Republicans are justified in not confirming anyone to the Supreme Court until after the election, not holding a hearing or vote on Merrick Garland's nomination is the honorable way of pursuing that goal. This has nothing to do with "doing your job" and everything to do with respecting the nominee.

Soon after Justice Scalia's death, Senate Majority Leader Mitch McConnell announced what has become known as the #NoHearingsNoVotes position. He explained that whoever fills this seat may shift the Supreme Court's direction for a generation, and that, given how polarized the country is and how close we are to the presidential election, we should wait until the voters have a say. Judiciary Committee Chairman Charles Grassley quickly adopted the same stance. All the Republican members of that committee — including veterans Orrin Hatch and Lindsey Graham, who often part ways with their colleagues to vote for Democratic nominees — sent McConnell a letter saying they wouldn't hold hearings on *any* nomination until after the next president is sworn in.

Grassley has held firm, despite taking heat in his native Iowa as he runs for a seventh Senate term. Most other Republican senators running for reelection in blue or purple states have similarly held the line. Only the embattled Mark Kirk of Illinois — joining the moderate Susan Collins of Maine — has called for a vote on the Garland nomination.

I happen to agree that there should be no pre-election confirmation, for reasons I'll briefly mention in a moment. But even if you don't, #NoHearingsNoVotes is the honest procedural posture for implementing that strategy. After all, what's the point of holding a hearing without any intent to approve the nominee? What's the point of having a committee vote if the Senate as a whole won't take this up? What's the point in engaging in any of this process if, at the end of the day, the Senate majority will vote against this or any nominee.

Chief Judge Merrick Garland is an honorable man with a sterling resumé. That alone doesn't merit his elevation to the Supreme Court — judicial philosophy matters — but it does earn him

respectful treatment. Turning what's already a toxic process into a kabuki-theater charade doesn't serve any purpose.

No, it's politically cleaner for Republicans to be honest at the outset and tell Judge Garland that "it's not you, it's the court." Senators should feel free to meet with the nominee — no harm in social pleasantries — and commiserate with him about being a sacrificial lamb. But there's no use in going through the motions of what would be a stillborn confirmation.

And GOP senators need not worry unduly that whomever the next president nominates, possibly with a Democratic Senate, would be worse than the "compromise" nominee now before them. Garland is assuredly a liberal vote on the most controversial issues — notably the Second Amendment — but he's also extremely deferential to administrative agencies and law enforcement.

In this context, there's little difference whether the next justice is radical or "moderate": Scalia was one of four conservatives on the Court, who, when joined by Justice Kennedy, formed a majority crucial for enforcing federalism, the separation of powers, and other structural protections for individual liberty. With any conceivable Democratic nominee, there won't be any check on the sorts of executive abuses that have only increased under a president who thinks that when Congress doesn't act, he gets the authority to enact his agenda regardless. Indeed, a true progressive may be better than former-prosecutor Garland on civil liberties.

But really, the roots of our broken judicial-appointment system go deeper than the polarizing presidencies of Barack Obama and George W. Bush, or even the slanderous rejection of Robert Bork in 1987. If the Supreme Court hadn't started corrupting its interpretive methodology in 1937 — allowing "constitutional law" to diverge from the Constitution in order to approve the New Deal and other federal overreach — we wouldn't be seeing these understandably titanic battles over ideological litmus tests.

And so, I have to agree—for possibly the first time—with Senate Minority Leader Harry Reid, who said this in 2005: "The duties of the U.S. Senate are set forth in the Constitution ... Nowhere in that document does it say that the Senate has a duty to give Presidential nominees a vote. It says that appointments shall be made with the advice and consent of the Senate. That's very different than saying that every nominee receives a vote."

You can't blame senators for acting on the political incentives they inherit, but you should commend them for being open about it.

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