



The GOP Is Gearing Up To Block ANY Clinton Nominee To The Supreme Court

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In a stunning political move, conservatives are already strategizing on how to block *any* future Supreme Court nominee from moving forward during Hillary Clinton's presidency before the election even happens.

"I don't think there is precedent for it. It really does reveal just how politically charged and polarized our judicial politics have become," said Charles Gardner Geyh, a professor of law at Indiana University who advised then-Sen. Joe Biden (D-DE) during the 1991 confirmation hearing of Justice Clarence Thomas. "We are at risk of losing legitimacy as a nation in terms of being able to govern effectively."

A number of Republican lawmakers and scholars have already begun openly rationalizing why Clinton shouldn't be allowed to appoint Supreme Court justices. (These are many of the same people who argued President Obama shouldn't get a nominee in the last year of his term because it should be up to the person who wins the November election.)

Sen. Ted Cruz (R-TX) told reporters that the Senate would have a "debate" about whether to accept Clinton's nominees and that there was nothing wrong with having just eight justices.

"You know, I think there will be plenty of time for debate on that issue," Cruz told the [Washington Post](#), when he was asked if the Senate would move forward with Clinton's nominees. "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."

Cruz's suggestion that the Supreme Court may continue to operate without another justice under Clinton also casts the stakes of U.S. Senate races across the country in a new light. If Republicans do hold the majority, will they follow Cruz's lead and refuse to move forward with any of Clinton's nominees no matter the nominee's record or qualifications?

"This is a clear abdication by the senator of his responsibility to carry out in good faith the advice and consent function set forth in the Constitution. Nobody can make him do it -- just as nobody can make him show up for a vote -- but he is saying that he won't do his job," said Paul Painter, a professor of law at the University of Minnesota and former White House counsel in the George W. Bush administration. "If high-ranking leaders in the Republican Party, my own party, conduct themselves in this fashion, our party will soon be irrelevant in the Senate as everywhere else on the political landscape. The voters simply will not put up with it."

Cruz is just one of several conservatives proposing the idea, however.

Sen. John McCain (R-AZ) vowed in a radio interview last week that the Republican Senate would "be united against any Supreme Court nominee that Hillary Clinton, if she were president, would put up." He later walked the comment back slightly via a spokesperson, who said he would look at a nominee's qualifications before making a final decision.

Cato Institute scholar Ilya Shapiro wrote a piece in the *Federalist* last week arguing that the GOP could just flat out refuse to move forward with any of Clinton's Supreme Court nominees.

"If Hillary Clinton is president it would be completely decent, honorable, and in keeping with the Senate's constitutional duty to vote against essentially every judicial nominee she names," he wrote.

Michael Paulsen, a conservative lawyer, wrote an op-ed in the *National Review* titled "The Case for Shrinking the Supreme Court."

"It is time to shrink the stakes by shrinking the Court itself. Bluntly put, the Supreme Court should be smaller so that it can do less harm. There are two routes to this goal. First, Congress could pass a simple bill to allow the Supreme Court's membership to gradually decrease to six justices as justices retire or die — returning the Court to its original size when established by the first Judiciary Act of 1789. Alternatively, in the event of a veto, the Senate could adopt a standing rule concerning its own "advice and consent" power that achieves the same thing: no more confirmations until the Court dips below six."

While legal experts concede that there have been times in U.S. history where the court has had fewer than nine justices and the Constitution does not explicitly dictate how many justices there should be, what conservatives are proposing is merely thinly-veiled partisanship.

Legal scholars who spoke with TPM argued that calls to shrink the court appeared to be motivated more by partisan politics of the moment and recent polls showing Clinton with a strong lead ahead of the November election rather than the alleged good governance arguments conservatives are making. Republicans earlier this year refused to move on President Barack Obama's nominee for the Supreme Court Merrick Garland, but their excuse then was that the next president should be allowed to nominate someone, not a president at the end of his term. What seems to be happening now is Republicans seem to have changed their minds once again knowing that Democrats hold the edge in the presidential race.

Geyh notes that playing politics with the court isn't exactly new. It was especially rampant during Reconstruction. What is new, is the blatant disregard for another party's nominee without even pretending to give them a chance.

"What is interesting to me is that if you look at the discussions in the 1860s, no one was saying what we are trying to do is snub the other party's president," Geyh said. "What is new to me is that they are being pretty open ."

Cruz's view of the court may not be widely shared at the moment by other Republicans. Senate Judiciary Committee Chair Chuck Grassley admitted that senators couldn't simply "stonewall"

Clinton if she were elected and the GOP held the majority. Fellow Judiciary Committee member Sen. Jeff Flake (R-AZ) has been forcefully leading the charge to get Garland confirmed in the lame duck out of fear that Clinton could nominate someone more liberal for the court if she were elected.

"I will be actively trying to round up votes to have hearings for him in a lame-duck session," Flake told reporters according to Roll Call.

One other potential scenario that outgoing Senate Minority Leader Harry Reid has actually suggested is that if Democrats win the majority in November, they still may not have enough votes to move forward with Clinton's Supreme Court nominees. If that were the case, Reid told TPM in an interview that he was confident he had laid the groundwork for Democrats to change the filibuster rules and allow Clinton's Supreme Court nominees to sail through the Senate with a simple majority.

Hillary Clinton's running mate Sen. Tim Kaine (D-VA.) doubled down on that strategy in an interview with the Huffington Post Friday.

"I was in the Senate when the Republicans' stonewalling around appointments caused Senate Democratic majority to switch the vote threshold on appointments from 60 to 51. And we did it on everything but a Supreme Court justice," Kaine told the Huffington Post. "If these guys think they're going to stonewall the filling of that vacancy or other vacancies, then a Democratic Senate majority will say, 'We're not going to let you thwart the law.'"

Legal scholars like Geyh, however, said even that had its drawbacks and could fundamentally change the long-term makeup of the court.

"They can change the rules and roll them but that creates a short-term solution and a tremendous long-term problem," Geyh said.