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After Election Day, The Politics Of The Supreme Court Will Change

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Over the past couple weeks, beginning with Sen. John McCain's statement that the Republicans will oppose any Supreme Court nominee put forward by a hypothetical President Hillary Clinton, talk has descended into half-jokes about whether the Supreme Court will eventually just disappear.

"I promise you that we will be united against any Supreme Court nominee that Hillary Clinton, if she were president, would put up," McCain **said** on Oct. 17, while working for the re-election of Sen. Pat Toomey in Pennsylvania.

McCain's staff later walked back his comment, but others including Sen. Ted Cruz have filled in the gap, **pressing** for a GOP firewall against any potential Clinton nominees. The Cato Institute's **Ilya Shapiro** and the Heritage Foundation's **Dan Holler**— two of the right's D.C. think tanks — have signaled that they, too, would push what amounts to a "who needs nine" effort if Clinton takes the Oval Office.

Shapiro went so far as to write, "As a matter of constitutional law, the Senate is fully within its powers to let the Supreme Court die out, literally" — although even he acknowledged that position is not likely "politically tenable."

Here's the thing, though: Everything changes Wednesday morning.

All of the comments being made in the final month of a seemingly unending presidential election cycle and in the closing days of an election in which control of the Senate hangs in the balance are posturing.

It's real posturing, insofar as that is possible — the Republicans are attempting to get out the vote for candidates whose races are essential to them controlling the Senate next year.

But beginning Wednesday morning, the Senate will need to face those governing questions.

For instance, they'll need to make a decision about what they will do with Merrick Garland, the well-respected chief judge of the D.C. Circuit Court of Appeals whom President Obama nominated to fill the vacancy on the Supreme Court left by Antonin Scalia's death in February.

If the country awakes Wednesday to the prospect of a Clinton White House — and especially if a Democratic Senate majority is coming — there is a very real likelihood that Republican talk will turn. (There is no reason to believe that Obama has any interest in withdrawing his nominee, as some have suggested could happen.)

This past week, for example, Sen. Johnny Isakson **told** the *Atlanta Journal-Constitution's* Tamar Hallerman, "My prediction is this: If Hillary Clinton wins next Tuesday, Garland will be confirmed before January."

Even if Republicans maintain the Senate majority, the post-election discussion will be different. The think tanks will continue to play their roles attempting to push the parties but the reality will sink in that four years of a Clinton presidency likely will not lead to anything other than — at the least — younger nominees than a man who turns 64 next week.

In short, once voting ends on Tuesday, we should probably prepare for Republicans to take a new look at the Supreme Court — and Obama's nominee.