



## **Cruz hints GOP won't vote on Scalia replacement if Clinton wins; the idea gains some support**

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U.S. Sen. Ted Cruz hinted on Wednesday that Republicans will continue to block U.S. Supreme Court nominees if Hillary Clinton wins the White House.

The Texas Republican's hint was a remark about precedent for a smaller Supreme Court, report the [Associated Press](#) and the [Washington Post](#). And the idea is gaining some support from legal commentators who are backing continued inaction or a smaller court, the Post says.

Cruz made his remark to reporters while campaigning for Republicans, in response to a question about Supreme Court vacancies.

"There will be plenty of time for debate on that issue," Cruz said. "There is 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 statement follows [a remark](#) by Republican Sen. John McCain of Arizona during a radio show suggesting a moratorium on Democratic nominees. "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.

A McCain spokesperson later clarified that McCain will "thoroughly examine the record of any Supreme Court nominee put before the Senate and vote for or against that individual based on their qualifications as he has done throughout his career."

Two commentators jumping into the fray are University of St. Thomas at Minneapolis law professor Michael Stokes Paulsen and Cato Institute senior fellow Ilya Shapiro.

Writing in the [National Review](#), Paulsen said Congress should shrink the size of the Supreme Court to six justices rather than nine, either through legislation or the use of its advice and consent power. "Bluntly put," Paulsen writes, "the Supreme Court should be smaller so that it

can do less harm.” The size of the court would gradually decrease in size as justices retired or died.

A smaller court would mean diminished judicial activism, Paulsen argued. That has already happened in an eight-member court, which has “kicked a few constitutional cans down the road,” he says.

“There is nothing magical about the number nine for justices,” Paulsen writes. “Historically, as noted, the court started with six. The number of justices has bounced around from six to seven to nine to 10, back down to seven, and back up to nine again.”

There have been nine justices on the court since 1869, according to AP. Six vacancies lasted more than a year and two lasted more than two years.

Shapiro makes his case for refusing to approve Democratic nominees at the Federalist. “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 writes