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Ted Cruz: There is 'historical precedent' for keeping Supreme Court seat vacant

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Sen. Ted Cruz told reporters at a campaign event in Colorado on Wednesday that there was a "precedent" for a Supreme Court with fewer than nine justices.

The comments suggest that the Republican-controlled Senate could continue to block any hearings for Obama's nominee Merrick Garland until after the election.

"You know, I think there will be plenty of time for debate on that issue," said Cruz, when asked if a Republican-controlled Senate should hold votes on a President Hillary Clinton's nominees, according to *The Washington Post*.

"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 continued.

Garland was nominated on March 16 after Justice Antonin Scalia died unexpectedly at a West Texas ranch.

Other Republicans on the Senate Judiciary Committee, including its chairman, Sen. Charles E. Grassley (R-Iowa) have said they will have to compromise if Clinton is elected in November.

"If that new president happens to be Hillary, we can't just simply stonewall," Grassley said last week.

Grassley's comments came after Sen. John McCain (R-Ariz.) told a Pennsylvania radio station that Republicans should consider a long-term plan to withhold nominees from a Clinton White House.

The Constitution does not specify the size of the Supreme Court. Some scholars argue that a smaller court will reduce "judicial activism."

"As the Court's size shrinks, activist majorities become mathematically harder to put together. Four votes out of seven is harder to achieve than five of nine," Michael Stokes Paulsen, a Minneapolis law professor, wrote in National Review last week.

Cato Institute legal scholar Ilya Shapiro went even further in an essay in the Federalist on Wednesday, suggesting that Republicans outright refuse to appoint any nominees suggested by Clinton.

"As a matter of constitutional law, the Senate is fully within its powers to let the Supreme Court die out, literally," Shapiro wrote. "I'm not sure such a position is politically tenable -- barring some extraordinary circumstance like overwhelming public opinion against the legitimacy of the sitting president -- but it's definitely constitutional."

Cruz was in Colorado to support Senate candidate Darryl Glenn. In his remarks, Cruz said that voters need a "check and balance" on the president — whether that be a President Clinton or a President Trump.

"I think for those of us who care passionately about the Constitution and Bill of Rights, who care about free speech and religious liberty and the Second Amendment, the best way to protect those rights is to win on Election Day so that we see strong conservatives nominated to the court, and maintain a Republican majority in the Senate to confirm those strong conservatives," Cruz said. "And that's what I'm fighting to do."