

Are We Deceiving Ourselves About the Importance of the Supreme Court?

One of the biggest reasons Christian conservatives are voting for Donald Trump is the make-up of the Supreme Court, and the reasoning is simple: If Hillary Clinton becomes president, she will nominate two to four new justices, and that could have a disastrous effect on the nation for the next 20-40 years, threatening our fundamental liberties and making it virtually impossible to overturn *Roe v. Wade* for a generation or more.

But are these concerns exaggerated?

Dr. Benjamin L. Corey, who blogs as a committed (and formerly fundamentalist) Christian, recently posted an article entitled, "The Christian Right's False Hope In A Conservative SCOTUS," in which he challenges the idea that "if we had a SCOTUS filled with justices largely appointed by Republicans, we wouldn't have *Roe v. Wade*, right?"

Corey rightly observes that "it was a majority Republican appointed SCOTUS that legalized abortion in the first place," noting that five of the seven justices who voted for *Roe* were appointed by Republicans.

He writes, "Even in the time since *Roe v. Wade*, we've had periods of Republican dominance of SCOTUS—at one point with eight of the nine justices were Republican! And yet there have still been plenty of rulings that were objectionable to the right wing—including the upholding of *Roe v. Wade*."

He continues, "So here's my question: If legalized abortion was given to America by a Republican SCOTUS, and if it has been upheld by an almost unanimously Republican SCOTUS, why the heck is one of the major selling points of this election

the idea that they'll get more court picks so that they can finally overturn it?"

In fact, Harry Blackmun, who authored the majority verdict in *Roe v. Wade*, was a Nixon appointee who was expected to hold a conservative position on abortion. Instead, he became a passionate supporter of a woman's "right" to have an abortion.

Is Corey, then, correct in reproving Christian conservatives who are trusting in Donald Trump to nominate good SCOTUS justices who will (hopefully) overturn *Roe v. Wade* and stand for our fundamental freedoms?

On the one hand, he is absolutely right in raising a cautionary flag, reminding us of how often we have been disappointed with either the justices appointed by a Republican president or, even more profoundly, with the decisions made by some Republican appointees.

After all, it was Justice Kennedy, appointed by Reagan, who was the notorious swing vote in the *Obergefell v. Hodges* decision that redefined marriage, writing the majority opinion.

And it was Chief Justice John Roberts, appointed by George W. Bush, who was a strong, surprise vote in upholding Obamacare.

And so, we do well not to vote for Trump with naïve expectations, not only regarding the make-up of SCOTUS but for other reasons as well (although, as I have recently explained, I plan to vote for him). And we do well not to put our hope in the decisions that will be made by the Supreme Court, recognizing that the ultimate way America will be changed will be through the faithful witness and work of the church.

But there's something important that Corey appears to have missed, which is this: While the votes of conservative-appointed SCOTUS justices sometimes disappoint conservatives, the votes of liberal-appointed SCOTUS justices rarely

disappoint liberals.

In other words, a liberal-appointed justice is much more likely to be consistent in his or her rulings than will a conservative-appointed justice, one reason being that it appears that Republican presidents have sometimes appointed more middle of the road conservatives while Democrat presidents have appointed more radical liberals.

Just look at how Justices Kagan and Sotomayor, both appointed by Obama, and Justices Ginsburg and Breyer, both appointed by Bill Clinton, have voted on major cases, including *Obergefell* and *Hobby Lobby*. There were no surprises from any of them in these cases.

And ask yourself how some recent, critically important, 5-4 decisions would have turned out if there was a Clinton or Obama appointee voting rather than Justice Scalia (appointed by Reagan) or Justice Alito (appointed by George W. Bush) or Justice Thomas (appointed by George H. W. Bush; note also that Scalia, Alito and Thomas have been quite consistent in their rulings).

Accordingly, while five out of the seven Republican-appointed justices disappointed their conservative constituents in *Roe v. Wade*, the two Democrat-appointed justices did not disappoint their constituents in voting in favor of *Roe*.

Not only so, but since 1973, the lines have been drawn much more clearly in the abortion debate and there are clearer litmus tests that can be used in appointing justices by either potential president.

And while I agree with Corey that there's certainly no guarantee that Trump-appointed justices would even attempt to overturn *Roe v. Wade*, let alone succeed in doing it, there is a virtual guarantee that Hillary-appointed justices would rule against pro-life legislation and for pro-abortion legislation, not to mention ruling the wrong way on the many religious

liberty cases that are expected to come before SCOTUS in the coming years, along with other cases involving the meaning of marriage, the right to bear arms and more.

Just consider recent bills like California's AB 1266, which could effectively shut down Christian colleges, or recent rulings like Ninth Circuit's upholding of the California law that pro-life pregnancy centers refer clients to abortion clinics, and ask yourself how SCOTUS would rule with new Hillary appointees on board.

And what of the roughly 250, life-appointed, federal judges who the next president will nominate? Shall we factor that in as well?

In light of these realities, it does make good sense to vote for Trump and against Hillary, more with the certainty of the damage she will do rather than with the hope of the good that he will do.

Considering just how many close, monumentally important, rulings have come down in the last few years, the stakes really are quite high.