

Radio Host: Battle Over Scalia Replacement 'Armageddon'

Judicial giant Antonin Scalia died on Saturday. He was a towering intellect and powerful force for constitutional jurisprudence. He will be impossible to replace. The best we will be able to do is come close.

President Obama will try to force through a replacement of his choosing, and will put forward a judicial midget with severely activist leanings. He has promised not to use a recess appointment to temporarily fill the slot, but the Senate cannot afford to go into recess long enough to give him the chance.

If Obama nominates someone, he will insist that the Republican-led Senate approve his nomination, by bleating about how inexcusable it is to leave a Supreme Court seat unfilled at this critical time in our nation's history, and how he gets to choose the next justice because "elections have consequences."

Well, Mr. President, we do agree with you that elections have consequences. That's why the Republicans are in position to stop you dead in your tracks. According to the Constitution, the president gets to nominate justices and the Senate gets to confirm them or reject them.

If all 54 Republicans hang together, it will be impossible for the president to confirm a legislative activist to the bench. And given the mood of the GOP base, if they do not hang together on this, they will most assuredly hang separately on Nov. 8.

There is one other reason why Mitch McConnell will make good

on his promise not even to allow an Obama nominee to come to the floor for a vote. He knows Sen. Cruz will make good on his promise to launch the mother of all filibusters if he does, and there isn't any way McConnell is going to give that kind of boost to Cruz's campaign.

A poll taken over the weekend indicates that Cruz is the favorite of Republicans to nominate the next Supreme Court justice, and he is surely the most qualified. He's argued nine cases before the Supreme Court, fighting for issues conservatives believe in. He clerked for former Chief Justice William Rehnquist, and has written 80 briefs for the Court. In other words, if Republicans are looking for a president who will nominate the closest approximation of Antonin Scalia that exists, Ted Cruz may be the man they're looking for.

Donald Trump, on the other hand, would not be the man for citizens looking for a president who will appoint an originalist. Mr. Trump would not recognize an originalist if one bit him on the leg. As his view of eminent domain reveals, he is utterly and dangerously clueless about the Constitution.

He has said his sister, who sits on the Third Circuit Court of Appeals, would make a "phenomenal" justice. She is an open advocate of special rights based on sexual deviancy and once delivered an opinion protecting the right of abortion doctors to partially deliver a baby, puncture a hole in the back of her head, and suck her brains out. No, putting Donald Trump in charge of a decision of this magnitude would be a categorical mistake of spectacular proportions.

Surely we will hear pots and pans being banged about how unprecedented all this is, and how meanly political the Republicans are. But Sen. Schumer himself in 2007 declared holy war against any George Bush nominee 18 months before he left office. We should simply ignore the frantic handwringing of liberals and read their own sound bites back to them. What goes around comes around.

And it would not be unprecedented. Under President Tyler, a Supreme Court seat went unfilled for 835 days. He sent nine successive nominations to the Senate, all of whom were rejected. By members of his own party!

A 4-4 split on the Court means that, until Scalia is replaced, lower court decisions will be allowed to stand. This will be good for closing abortion clinics in Texas and bad for the Little Sisters of the Poor, who will be inexcusably forced to buy morning-after pills for their own nuns who have taken vows of chastity. But it is better to lose some important cases for 11 months than to lose every important case for the next 30 years.

The last time a justice was confirmed in an election year with a divided government, as we have today, was 1880. We can afford to wait.

We will certainly hear talk about “ideological parity” on the court, the importance of balancing liberal voices with conservative ones. As conservatives, we want ideological parity as much as the next guy: We want nine justices who share Scalia’s commitment to originalism.

Whether our constitutional Republic can even survive is at stake here. We were designed to be governed by the Constitution and not an oligarchy of nine robe-wearing tyrants who bend, spindle and mutilate the Constitution until it’s in the shape they want. That means that every battle over every Supreme Court justice is of monumental importance.

The next president will likely have the opportunity to appoint three additional justices. America had better pick the right man in November, or we will have squandered our last best hope to once again be a government under the rule of law and not a government under the rule of men.

Bottom line: The battle over Scalia’s replacement is now the defining issue of the 2016 campaign. There is no other.

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