

UCLA Prof.: 2016 Election Shaping Up As Clash of Ids

The U.S. Supreme Court is supposed to be the solution to gridlock. But as the death of Associate Justice Antonin Scalia makes painfully apparent, gridlock is now overtaking the court.

When the political system threatens to break down in gridlock—as it did during the recount following the 2000 presidential election—the Supreme Court intervenes to resolve the issue. Many Americans disagreed with the 5-to-4 ruling that made George W. Bush the president. Miraculously, though, there were no mass protests, no riots, no violence. The U.S. Constitution is sovereign, and the Supreme Court is accepted as its voice.

Separation of powers in the United States is supposed to foster compromise and deal-making. But Tea Party Republicans reject compromise and deal-making as unprincipled. So we end up with stalemate on issue after issue. The Supreme Court has to break the stalemate—sometimes in favor of liberals (same-sex marriage, Obamacare) and sometimes in favor of conservatives (campaign finance, climate change). Often the vote has been by the closest possible margin: 5 to 4. Without Scalia, the court splits 4 to 4.

Now the United States faces gridlock over breaking that stalemate on the court. Republican Senate Majority Leader Mitch McConnell (R-Ky.) and the Republican candidates for president have made it clear: They will regard anyone President Barack Obama nominates to fill the vacancy on the court as illegitimate.

That's wrong. Obama has said, "I plan to fulfill my constitutional responsibilities to nominate a successor in due

time.” The Senate would be shirking its constitutional responsibility if it refuses to take up the nomination.

The response from Republicans: So what? “Delay, delay, delay,” the GOP nominee front-runner Donald Trump advised during the last Republican debate on Saturday. Republicans want to keep the seat open until next year, when a new president takes over. They expect the new president to be a Republican. They know it won’t be Obama.

“If there’s any move within the Senate to consider a confirmation this year,” warned former Republican Senator Jim DeMint, “I think you would see outright rebellion from all across America.” DeMint heads the Heritage Foundation, which under his leadership has become chief enforcer of conservative discipline.

If a Republican senator votes to confirm an Obama nominee—or votes even to allow a Senate vote on confirmation—the senator is virtually guaranteed a conservative primary opponent. If the senator refuses to confirm, however, then he or she becomes instantly vulnerable to the charge of obstructionism. That could be a serious problem for Republicans up for re-election in Obama states this year, including such blue states as Illinois, New Hampshire, Ohio, Pennsylvania and Wisconsin.

A Democratic official warned, “If McConnell stonewalls, we will empty the arsenal. We will make sure this is seen as the radical, unprecedented act of obstruction that it is.”

The Supreme Court issue instantly escalates the stakes in the 2016 presidential race. The next president could tip the ideological balance on the court. And thereby determine the resolution of the most high-octane conflicts in U.S. politics: immigration, climate change, abortion, affirmative action, campaign finance, Obamacare, religious rights.

Normally, the Supreme Court does not drive most Americans’ presidential votes. That is likely to change this year. “The

fact that there is an immediate vacancy—and a vacancy that could tip the court's ideological balance,” wrote Tom Goldstein, publisher of the leading Supreme Court blog, SCOTUSblog, “makes the future of the court much more concrete.”

The Supreme Court has the final say on deeply divisive social issues such as abortion, civil rights, same-sex marriage and immigration. These are basic identity issues for many Americans. They define the battle lines in the political civil war between Red and Blue America. The Supreme Court vacancy is likely to rally huge turnout on both sides. “I don’t think there’s a young person, a woman, a Democrat, independent or a diverse voter that will stay home,” one Democratic strategist said.

Nor is it likely that many older white men, religious Americans or conservatives will stay home when issues of basic identity are at stake. Not when a candidate like Senator Marco Rubio (R-Fla.) keeps repeating his sinister charge, “President Obama is undertaking a systematic effort to change this country.”

In last Tuesday’s New Hampshire primary, neither Democratic nor Republican voters were much concerned about electability. Only one in eight voters in either party said their top concern was winning in November. Both parties ended up voting for candidates whose electability in November is very much in doubt.

Senator Lindsey Graham (R-S.C.), a former Republican presidential candidate, called the vacancy on the Supreme Court “a wake-up call.” He warned his fellow Republicans, “You better nominate somebody who can get 270 electoral votes. Donald Trump can’t. Ted Cruz can’t.”

Democrats have to ask themselves the same question about Senator Bernie Sanders (I-Vt.). Do they dare to take chances

when so much is at stake?

The Supreme Court vacancy puts social issues at the heart of the campaign. Social issues involve the basic instinctual drives of Red and Blue America. Sigmund Freud defined those drives in individuals as the “id”: “a cauldron full of seething excitations.” Bring up the Supreme Court and you get “seething excitations” from both Democrats and Republicans.

The 2016 election is shaping up as the Clash of the Ids.

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