

Why the U.S. Senate *must* refuse to cooperate in President Obama's plan to make the U.S. Supreme Court into a pro-abortion super-legislature

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At the U.S. Supreme Court, a vacant chair is draped in black. In filling the vacant seat, the stakes could not be higher.

The vacancy should be filled by the president who is elected on November 8, 2016.

Certainly, the Constitution gives President Obama the authority to nominate a replacement for the late Justice Antonin Scalia – but the Constitution also makes it clear that the vacancy will endure until the U.S. Senate gives “consent” to a nominee. There are various ways that the Senate may refuse to consent, including inaction on a nomination, which is what should occur in this case.

That is because this is not *primarily* about the professional credentials of a particular nominee – it is about *who decides* whether unborn children will be protected, whether religious liberty will be protected, and whether the free-speech rights of groups out of favor with the liberal elites will be protected (among other things).

In July 2007, a prominent member of the then-majority party in the Senate, Charles Schumer (D-NY) – who is now the heir-apparent Democratic Senate leader – gave a speech urging Democratic senators to reject virtually *any* nominee to the Supreme Court during the remaining *18 months* of the administration of President George W. Bush. (“I will recommend to my colleagues that we should not confirm a Supreme Court nominee EXCEPT in extraordinary circumstances,” Schumer said.) In 2016, Republican senators should now adopt as their byword the doctrine enunciated in 2007 by Schumer: “*We should reverse the presumption of confirmation.*”

Statements in recent days by President Obama, Hillary Clinton, and Senators Bernie Sanders, Harry Reid, Patrick Leahy, and Schumer, suggesting that blocking an Obama nominee would be outrageous or unprecedented, are laughably hypocritical. In 2006, then-Senator Obama himself voted for an unsuccessful filibuster against Samuel Alito, as did Clinton, Reid, Leahy, and Schumer.

(Sanders was not yet a senator.) Moreover, the successful liberal campaign to defeat the nomination of Robert Bork in 1987, which was purely ideological, undoubtedly determined the outcome of many subsequent Supreme Court decisions, including the 1992 ruling (*Casey v. Planned Parenthood*) that reaffirmed the “core holdings” of *Roe v. Wade* on a 5-4 vote.

Regardless of what they said during their confirmation hearings, every justice appointed by President Clinton and President Obama has repeatedly demonstrated a willingness to use raw judicial power to remove authority from elected legislators, in order to advance the liberal policy agenda, even where no constitutional provision remotely justified such anti-democratic decrees. Likewise, where a clear constitutional command conflicted with the liberal agenda – for example, with respect to free exercise of religion, or political free speech – the Democrat-appointed justices have often ignored the constitutional commands and voted instead to impose the liberal agenda.

There is little doubt that the next Obama nominee would provide the fifth vote to strip elected legislators of all meaningful authority to protect unborn children and regulate abortion. The result would be invalidation not only of recently enacted state abortion laws, such as the abortion clinic regulations currently before the Court, but also of a host of longstanding state and federal pro-life policies, including the federal Partial-Birth Abortion Ban Act and the Hyde Amendment.

In addition, there is little doubt that another Obama nominee would be the fifth vote to effectively nullify statutory and constitutional protections against mandatory participation in paying for or providing abortions, and the fifth vote to strip away the First Amendment protections that the Court has recognized for independent speech about those who hold or seek political office.

Each and every pro-life senator has the constitutional authority, and indeed the duty, to prevent these catastrophic results, by *withholding consent*. Any senator who fails to recognize what is at stake, any senator who wilts under the coming onslaught from the mainstream media and the liberal elites, will forfeit any claim to pro-life support.