

DEMOCRACY AWAKENING 2016

SUPREME COURT

Throughout our nation's history, the Supreme Court and the legal questions it resolves have had a deep and lasting impact on Americans' lives. In the current term, for example, cases before the Court include such controversies as the constitutionality of state efforts to severely restrict abortion providers and to allow unions to effectively organize. The Court is also set to weigh in on voting rights, contraception, religious liberty, affirmative action, immigration policy, and more. A Supreme Court that is short one justice could very well be unable to issue a majority ruling in most or all of these closely divided cases. Although a tie vote would affirm by default the specific lower court rulings under review, the result would be that many of these important issues would be left in limbo.

Filling the current vacancy is crucial to ensuring that the Supreme Court can effectively perform its role in our democracy.

CURRENT STATUS

This is the first Supreme Court vacancy since the 2010 retirement of Justice John Paul Stevens. It is the first due to a death since the 2005 passing of Chief Justice William Rehnquist. Justice Antonin Scalia's death undoubtedly marks a turning point for the Court and the country. And Chief Judge Merrick Garland's nomination is a real test for the United States Senate.

The Constitution makes clear that the Senate has the responsibility to give fair hearings and a timely vote to whoever the president nominates to the Supreme Court. Senators need to do their jobs and treat Chief Judge Garland with the basic respect he deserves.

HISTORICAL LESSONS

The President and the Senate have historically kept the length of Supreme Court vacancies to a minimum. For more than the last century, there has never been a vacancy left open for over a year. In fact, there has never been a vacancy of longer than four months while the Court has been in session. Today's obstruction could perpetuate a vacancy in two consecutive terms – another unprecedented action.

Justice Kennedy's much-discussed 1988 confirmation was far from the only time that nominations have been confirmed, and even submitted to the Senate, during Presidential election years. In fact, Justice Louis Brandeis and Justice Benjamin Cardozo were nominated in January and February of presidential election years and confirmed long before the election.

Fair consideration of Chief Judge Garland would also be consistent with what happened in 1968 when Justice Abe Fortas was nominated to succeed Chief Justice Earl Warren. Although Justice Fortas's nomination was filibustered, the historical record is clear that this was because of specific concerns about his finances and more general objections to the Warren Court, not the impending election. In fact, Chief Justice Warren's resignation did not take effect until his successor was confirmed, which happened in 1969; thus, no actual vacancy occurred.

GET INVOLVED

We need your voice in this movement. If you have yet to publicly call for fair consideration, now is the time to stand with your colleagues and issue a press release or make a floor speech, and then continue speaking out as the nomination process unfolds. We must stand united for fair consideration for as long as it takes.