

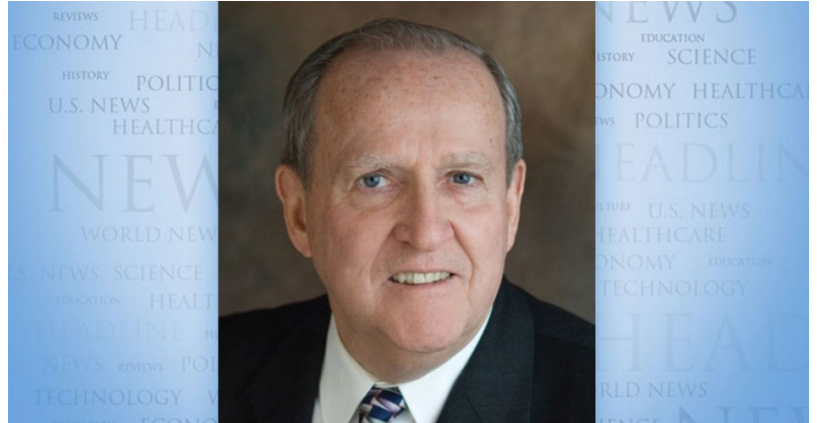


Written by [John F. McManus](#) on February 27, 2016

## Supreme Court Vacancy

The sudden death of Supreme Court Justice Antonin Scalia has forced the nation to think about who might fill the vacancy. Will it be someone holding his conservative/originalist thinking? Or will it be someone of the Obama/Hillary Clinton brand? The decision will shape the court for several years into the future.

Senate Majority Leader Mitch McConnell (R-Ky.) has stated that during the current election year “there will not be any vote on an Obama Supreme Court nominee. Period. End of story.” As Majority Leader, he holds power to decide whether or not the Senate considers any nominee. He wants to wait until after a new President takes the oath of office in January 2017.



Pro-Obama senators have been crying foul, insisting that any sitting president has the right to nominate someone for the open seat, and the Senate has a duty to consider him or her. They’re correct as far as they go. But the Senate leader also has power; he can sit on such a nomination without scheduling any hearings and without any vote to approve or disapprove.

New York Democratic Senator Chuck Schumer is the likely leader of Democrat senators starting in 2017 because current Minority Leader, Nevada Senator Harry Reid, is retiring. And Schumer is adamantly insisting that any Obama nominee should be given due consideration by the current Senate. However, in July of 2007, Schumer backed the McConnell-style delay plan until an election has passed and the nation had a new president. With the 2008 election in mind, he stated: “I will recommend to my colleagues that we should not confirm a Supreme Court nominee except in extraordinary circumstances.” He clearly wanted confirmation of any new addition to the court to wait until after a Democrat was elected in 2008. (The 2008 election did result in Democrat Obama’s win over Republican McCain.)

Now, Schumer is insisting that his 2007 attitude does not apply. His argument is weak to say the least. Additionally, researchers have gone back to 1992 when then-Senator Joe Biden of Delaware proposed this very same argument. Now the nation’s Vice President, Biden doesn’t want to be reminded of what he said when George H.W. Bush occupied the White House. What he would like everyone to forget is his stand proclaiming, “It is my view that if the president goes the way of Fillmore and Johnson and presses an election year nomination, the Senate Judiciary Committee should seriously consider not scheduling confirmation hearings on the nomination.”

But today, we have Democrat Senator Chuck Schumer and Democrat Vice President Joe Biden turning on their previous attitudes and calling for any Obama nominee for the high court to be considered



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promptly. Their hypocrisy could hardly be greater.

They, of course, know that any Obama nominee would shift the balance of power in the Supreme Court to their liberal way of thinking. They would have no difficulty supporting a newly named Democrat to sit alongside liberal Justices Ginsburg, Kagan, Sotomayor, and Breyer. Before Scalia's demise, the court's 5 to 4 majority rested with him and Justices Thomas, Kennedy, Roberts, and Alito.

Filling the seat left vacant by the passing of Antonin Scalia is almost as big an issue as who will win the presidency in 2016. If the winner happens to be Donald Trump, conservative Americans ought to be nervous because he has already suggested nominating either U.S. Appeals Court Justices Diane Sykes or Bill Pryor. Sykes has ruled that Indiana cannot fully defund Planned Parenthood. And Pryor, serving as an Alabama judge in the past, helped lead the effort to oust the state's Chief Justice because he wouldn't remove a monument containing the Ten Commandments from state property.

It is unlikely that an Obama nominee will be approved in 2016. As to who will win the 2016 election for president and who that new occupant of the White House will nominate to fill the open seat, no one knows at this point.

*John F. McManus is president emeritus of [The John Birch Society](#). This column appeared originally at the [insideJBS](#) blog and is reprinted here with permission.*



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