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Presidential Election Will Shape Supreme Court, and National Policies, for Years to Come; Evenly split bench is likely to shift with appointment of Scalia successor and two or more justices retiring

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WASHINGTON—Republicans and Democrats on the campaign trail say the 2016 election could reshape the Supreme Court for decades. They are right.

The next president could fill a vacancy created by Justice Antonin Scalia's February death and two or more additional seats as elderly justices retire. The changes likely will shift the court from its current makeup of four liberals and four conservatives, shaping some of the nation's most significant issues on social norms, individual rights, balance of government powers and business and workplace matters.

"It's pretty rare that it's an evenly balanced court about to go one way or another, so the stakes have never been higher," said John Aldrich, a political-science professor at Duke University.

Senate Republicans have declined to consider the nominee President Barack Obama announced in March, U.S. Circuit Judge Merrick Garland, aiming to keep the seat open in the hope Republican nominee Donald Trump wins the White House and appoints a conservative justice.

That would restart a decadeslong conservative drive that ground to a halt with Justice Scalia's death, affecting the outcome of several cases on issues such as the power of public-employee unions, religious exemptions from the health-care law and the extent of federal authority to set national policy over objections from states or private interests.

A win by Democrat Hillary Clinton, in contrast, would set the stage for a liberal majority on the Supreme Court, something not seen since the retirement of Chief Justice Earl Warren in 1969.

What that might mean is "hard to contemplate," said **Carlton Larson**, a law professor at the University of **California**, Davis. "For my entire life, we've had a conservative-moderate court," he said, adding "in terms of an aggressive liberal agenda, there probably isn't one today."

The gay rights issue has been an exception, but following the 2015 decision affording marriage to same-sex couples, "the big gay-rights cases have already been dealt with," he said. Over recent decades, the court's liberals primarily have focused on defending from conservative challenge mid-20th century precedents that expanded civil rights and upheld social-welfare legislation, something that is likely to continue.

Elizabeth Slattery, a legal fellow at the conservative Heritage Foundation, said she expects a liberal majority would try "to restrict religious liberty to the four walls of a house of worship," possibly by targeting the 2014 Hobby Lobby decision that allowed for-profit corporations to seek religious exceptions to legal obligations under the federal Religious Freedom Restoration Act. Liberal justices may be skeptical of laws that allow officials or businesses with religious objections to homosexuality to avoid providing services to married same-sex couples.

The landscape in the legal fight over abortion also could change with multiple appointments. A court with two or more new conservatives could throw into doubt the 1973 *Roe v. Wade* decision recognizing a woman's right to

abortion and create more leeway for state restrictions on the procedure. In contrast, additional liberals on the court could bolster abortion rights.

A single Democratic appointment to the Supreme Court could doom the 2010 Citizens United decision, which struck down restrictions on corporate and union political spending. That ruling and other opinions invalidating campaign finance laws came on 5-4 conservative majority votes that said restrictions on finance amounted to a restraint of free speech. A Clinton appointee almost certainly would join liberal justices who dispute that analogy and have signaled an intent to significantly narrow or overrule the Citizens United ruling.

Mr. Trump has said he would appoint conservative justices sure to share the former court majority's deep skepticism of campaign finance regulations.

Gun rights also likely depend on the next appointments. Supreme Court rulings in 2008 and 2010 held 5-4 that the Second Amendment provides individuals a right to keep a handgun in the home for self-defense. Since then, however, the court has done little to clarify whether gun rights extend further, letting stand lower court decisions that usually have upheld restrictions on semiautomatic weapons and other regulations enacted by some states and localities.

That trend likely would continue under justices appointed by Mrs. Clinton. A Trump appointee likely would join with other conservatives who have said gun rights should be strengthened.

Caroline Fredrickson, president of the liberal American Constitution Society, said the addition of Clinton appointees could spell the end of the death penalty, which already is in decline. "There already are several justices who think the time has come to end that practice," she said.

Besides such high-profile issues, Ms. Fredrickson said she expects Clinton appointees to pare back legal rules adopted by the court's former conservative majority that benefit business interests and government officials.

"There are a number of cases that may not be as well-known as Bush v. Gore or Citizens United, but have imposed real procedural hurdles for people" seeking redress in court, she said. For instance, she said Clinton appointees might be inclined to ease the way for class-action lawsuits, weaken precedents that strictly enforce consumer- and employee-arbitration clauses, and lift the broad immunity from liability afforded to police officers and other public officials sued for misconduct by private citizens.

If conservatives regain the upper hand, some issues might not make it to the court as a Trump administration moves away from Obama policies on environmental, consumer, employee and immigration matters that have been challenged in the courts. On the other hand, if Mr. Trump were to aggressively assert his own executive authority, the courts could face challenges to Trump's authority similar to those brought against Mr. Obama.

Some areas of law, however, are harder to predict based on who makes the appointment. In some criminal cases, for instance, Justice Scalia was more protective of defendants' rights than the normally liberal Justice Stephen Breyer. And justices across the ideological spectrum have at times suggested that the revolution in digital technology requires a new approach to privacy rights that could lead to tighter controls on government surveillance.

As a political issue, the Supreme Court is unlikely to tilt the election. "It's never figured that prominently in terms of how you win votes of people who are undecided," Mr. Aldrich said. Yet—as Mr. Obama has seen in cases involving the Affordable Care Act, immigration policy and gay rights—the success of future presidential agendas may rest with supreme bench.

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