

Merrick Garland Deserves a Vote—For Democracy’s Sake

The Wall Street Journal, July 17, 2016

By

BARACK OBAMA

For more than 40 years, there has been an average of just over two months between a president’s nominating someone to the Supreme Court and that person’s receiving a hearing in Congress. It has now been more than four months since I nominated Merrick Garland, chief judge of the U.S. Court of Appeals for the D.C. Circuit—and Congress left town for a seven-week recess without giving him a hearing, let alone an up-or-down vote.

This is much more serious than your typical case of Washington dysfunction. And if we allow it to continue, the consequences of congressional inaction could weaken our most important institutions, erode public trust and undermine our democracy.

Every Supreme Court nominee since 1875 who hasn’t withdrawn from the process has received a hearing or a vote. Even when the nominee was controversial. Even when the Senate and the White House were held by different parties.

But Chief Judge Garland isn’t controversial. He has more federal judicial experience than any Supreme Court nominee in our history. He is widely respected by people of both political parties as a man of experience, integrity and unimpeachable qualifications. The partisan decision of Senate Republicans to deny a hearing to a judge who has served his country with honor and dignity is not just an insult to a good man—it is an unprecedented escalation of the stakes. It threatens the very process by which we nominate judges, regardless of who our next president is. And it should concern every American who cares about the rule of law and upholding the institutions that make our democracy work.

Here’s why. Historically, when a president nominates a Supreme Court justice—regardless of when in the presidential term this occurs—the Senate is obligated to act. Senators are free to vote their conscience. But they vote. That’s their job.

If Republicans in the Senate refuse even to consider a nominee in the hopes of running out the clock until they can elect a president from their own party, so that he can nominate his own justice to the Supreme Court, then they will effectively nullify the ability of any president from the opposing party to make an appointment to the nation's highest court. They would reduce the very functioning of the judicial branch of the government to another political leverage point.

We cannot allow the judicial confirmation process to descend into an endless cycle of political retaliation. There would be no path to fill a vacancy for the highest court in the land. The process would stall. Court backlogs would grow. An entire branch of government would be unable to fulfill its constitutional role. And some of the most important questions of our time would go unanswered.

This is troubling for two reasons. First, a functioning judiciary—at every level—is essential to the business of the nation. For example, last month, a deadlocked Supreme Court was unable to reach a decision on several major issues, leaving the law itself in limbo. Across the country, judicial vacancies are leaving some lower courts so overwhelmed they can barely make it through their dockets. Twenty-nine judicial emergencies have been declared by lower courts across the country. This has real implications for jurisprudence, real financial costs to the judicial system and real consequences in the lives of people awaiting the outcomes of those cases.

Second, treating the Supreme Court like a political football makes the American people more cynical about democracy. When the Supreme Court becomes a proxy for political parties, public confidence in the notion of an impartial, independent judiciary breaks down. And the resulting lack of trust can undermine the rule of law.

So here's an idea. Democrats and Republicans in the Senate could agree to give Chief Judge Garland a hearing when they return from their extended recess, while also committing to give every future qualified Supreme Court nominee a hearing and a vote within an established time frame. It's a good idea that my predecessor, President [George W. Bush](#), suggested during his time in office. This reasonable

proposal would prevent the confirmation process from breaking down beyond repair, and help restore good faith between the two parties.

In my travels around the world as president, I have seen how hard democracy is—how it takes more than a proclamation or even an election. Democracies depend on the institutions we build, the rules upon which the nation is founded, and the traditions, customs and habits of heart that guide our behavior and ensure that political differences never override the founding ideals that bind us. And it is on us—all of us—to preserve and protect them.

Now we need Congress to act. We need senators to demonstrate that, once again, America has the capacity to rise above disagreements and maintain a fidelity to the values that, for 240 years, have made this extraordinary experiment a success. That's what the American people deserve—and it's what makes ours the greatest country the world has ever known.

Mr. Obama is the president of the United States.