

# KeizerOpinion

KEIZERTIMES.COM

## Obama must nominate justice

The funeral for the late Supreme Court Justice Antonin Scalia hasn't been held yet and already the forces are out to hyper-politicize the naming of his replacement.

Scalia died last weekend at the age of 79 after serving nearly 30 years on the nation's highest court. He is being lionized across the spectrum as a giant in the judicial world, a first-class intellectual and a never-say-die defender of conservative values.

The United States Supreme Court can boast any number of great thinkers in its history from John Marshall to Charles Evan Hughes to Earl Warren. The Constitution calls for the president to nominate justices and the Senate to advise and consent on the choice. The confirming of justices was a fairly routine affair until President Lyndon Johnson unwisely tried to get his friend Abe Fortas approved as chief justice to replace Earl Warren. Fortas' own shortcomings (and the political calendar of 1968) forced him to resign from the court.

In 1987 President Reagan nominated Robert Bork (famous, in part, for his role in the Saturday Night Massacre of the Watergate Era). Bork was a staunch conservative and Constitutional originalist; he was vilified and opposed by many groups (and one of only three Court nominees ever to be opposed by the American Civil Liberties Union). His nomination was defeated by a 42-58 vote.

Reagan then nominated Anthony Kennedy who was confirmed by a 97-0 vote in February 1988. By that time the presidential race was well underway but no Democratic or Republican Senator called for a delay to allow for the new president to fill the vacancy.

Fast forward 28 years and the story is very different. Within hours of the

editorial

announcement of Scalia's death Republicans (including the six presidential candidates) said that President Obama should leave the nomination of Scalia's successor to the next president—to be elected in 11 months and sworn in two months after that. This is no way to run our government.

Republicans, who sense a victory in the presidential election, see no harm if they demand Obama stand down on naming a justice. During the debate Trump said that the Senate Republicans can use delaying tactics to assure no further Obama appointee sits on the Supreme Court.

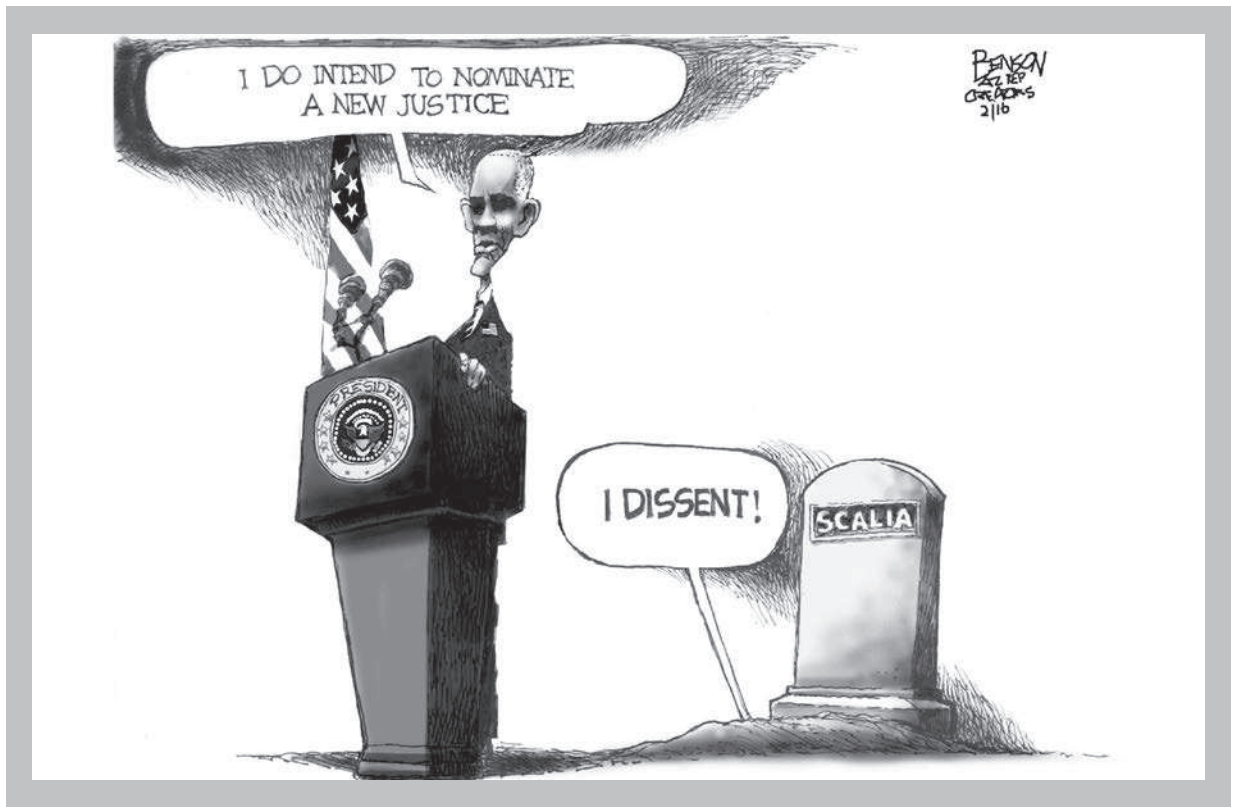
Senate Majority Leader Mitch McConnell said the American people should have a say about a nominee. The American people have never had a say about a Supreme Court (or any other federal court) nominee. The public can make speeches, write letters, lobby their member of Congress. The president nominates and Congress considers and votes for or against approval.

Senator Elizabeth Warren said it exactly right about McConnell's view: the people did have a say on Court nominations when they re-elected Obama in 2012 by more than 5 million votes.

If Scalia had died one or two years earlier none of this would be an issue. Let the process work as the Founding Fathers wrote in the Constitution. If politicians don't like the system they can try to change it via amendments but that is unlikely.

President Obama said this week he will fulfill his duty and name a nominee for the vacant Supreme Court seat. He is doing what Scalia so often said government should do: heed the Constitution's intent.

Obama is right; obstructionists are wrong. —LAZ



## Replacing Scalia will take epic effort

By MICHAEL GERSON

A public official can fight to expand the power and prerogatives of his office with skill and cunning. Defending the prerogatives of other officials, in another branch of government, is done only out of principle. Justice Antonin Scalia spent a career in America's judicial aristocracy defending representative democracy. He wanted courts to play a limited, supportive role, interpreting texts produced by representatives of the people. If new meanings are required—as they often are, in a varied, progressing country—then it is the people who need to provide them.

“Do you think the American people would ever have ratified” the Constitution, Scalia asked, if they had known that “the meaning of this document shall be whatever a majority of the Supreme Court says it is?” On issues such as abortion rights, he said that judges “vote on the basis of what they feel,” which amounts to “the destruction of our democratic system.”

The reaction of judges who enjoy a starring role in American government was, and is, negative. Which is unsurprising. Progressive judges have an interest in making their private moral intuitions the law of the land, without the inconvenience of having to persuade their fellow citizens. If judicial decision-making involves the interpretation of evolving standards, this gives tremendous influence to the interpreters. Progressives generally like this approach because it has secured progressive outcomes. But, as a political theory, there is nothing particularly liberal about it because it grants immense political power to a small self-serving, self-dealing elite.

Here is Scalia: “The non-originalist judge who decides what the mod-

other views

ern Constitution ought to mean—perhaps by applying his favorite principles of moral philosophy, or perhaps only by applying his own brilliant analysis of what the times require—escapes the application of any clear standard, by which we may conclude that he is a charlatan.”

In exposing this scheme, Scalia—the strongest of Catholics—was thoroughly Protestant in his disposition. He viewed the advocates of a “living Constitution” in much the same way that Martin Luther viewed the Roman Catholic priesthood—as a class maintaining its power through mystification and the claim that only it can interpret sacred texts. Scalia argued for the plain meaning of texts, available to everyday people. A priesthood of citizens. And Scalia did spark something of a reformation, inspiring a generation of judicial originalists who have gained serious influence in academia and on the bench.

The question “Who judges?” is also the question “Who rules?” Scalia, the brightest judicial light of his time, wanted the representative branches to rule.

And so how is the legislative branch likely to respond to a Supreme Court vacancy as consequential as the one Scalia's death creates? Not well.

In the plain meaning of the text of the Constitution, appointing “judges of the Supreme Court” is a presidential power. And Alexander Hamilton, in Federalist 76, asserts broad presidential discretion in exercising this authority and sets out narrow grounds for the Senate to reject

nominees.

All of which now means little. The nomination system is broken beyond recognition. And yes, it is Democrats who started it. The nomination of Robert Bork to the Supreme Court during the Reagan years set the pattern—in ideologically decisive nominations—of war-room style campaigns involving opposition research and public defamation. As far as I can tell, there is no going back.

President Obama's task is further complicated by exceptionally bad relations with Congress. Most Republican leaders can (and do) relate stories of snubs and disdainful treatment by the president. He has no chits of goodwill to cash.

And the political pressures on Senate Majority Leader Mitch McConnell all go in one direction: to delay and delay, without even a Judiciary Committee vote. If McConnell allows a decisive change in the Supreme Court on his watch, conservatives will ask: What good is having a Senate majority anyway? The revolt against McConnell would be broad, and include much of the Republican presidential field.

Obama will attempt to change this dynamic with an appealing and/or exceptionally qualified nominee. Could the Iowan leader of the Judiciary Committee, Chuck Grassley, really oppose an Iowan? Could the Senate refuse someone who it approved for a lower court by 97-0?

It will not matter. In part because the Supreme Court has assumed such a large role in American life, a decisive shift in its ideological composition would be an event of massive political consequence. And no one will be bringing the Federalist Papers to this knife fight. (Washington Post Writers Group)

## What Keizer loses

Tuesday's city council meeting was the final one for Brandon Smith. He submitted his resignation last week; he is moving to Salem, making him ineligible to serve on the body.

Smith has served twice on council. He was appointed to a vacancy in late 2007 and won the seat in his own right in the 2008 election and served until early 2013. He commenced an unsuccessful write-in candidacy to retain his seat against Ken LeDuc. Smith ran unopposed for the city council in the 2014 election.

Though always true to his political and ideological leanings, Smith was an unabashed supporter of everything Keizer. That's evident in his resume of service on a wide number of commissions, committees and task forces. His chairmanship of the Keizer Parks and Recreation Advisory Board was important because

it brought about the matching grant program that allowed the community to improve parks if it raised half of the cost of a project.

Smith was at the forefront of a move to create stable funding for Keizer's many parks. Discussions are on-going about a parks district or other options.

Brandon Smith was not a showy politician. He quietly worked on the tasks at hand; he asked insightful questions at council meetings and didn't accept as final any answers he did not agree with.

What Keizer loses with the loss of Brandon Smith from the city council is a resident who knows his own mind and wants what is best for the city and its residents and is willing to, politely, do what is necessary to achieve that. —LAZ

## Thanks for your kindness

To the Editor:

To the gentleman who found my bank card, I would like to say “thank you” for going out of your way to return it to my bank. As fate would have it, I was frantically searching for my card today when I realized it was

letters

missing. At that moment, I received a call from my bank that it was there, safe and sound. Thank you, I love a happy ending! Yet another reason why I love living in Keizer!

Audrey Butler Keizer



## Put more effort into CTE for students

Some of our state legislators will get into something that has complex features and then over-simplify it for the sake of political gain. A classical example of such a matter is a guest opinion in another newspaper by Republican Senator Ted Ferrioli of John Day who wrote glowingly but without a word about the historic shortcomings regarding career and technical education programs (CTE) for Oregon high school students.

He began reasonably enough when he wrote that in spite of low graduation numbers and poor school outcomes, it's important for state political leaders to want to bring about investments for improvements in Oregon's schools. Wisely, he doesn't want to see another task force devoted to this matter; rather, he seeks budget allocations for programs that have, mostly in other times and places, proven their value. These are career and technical education programs or CTEs.

Ferrioli reminds readers in his piece that the state's Department of Education reported recently that CTE students in Oregon are 15.5 percent more likely to graduate from a high school in four years time than their fellow students, without CTE involvement. This information should surprise no one who has been in Oregon public education for a while as this statistic could have been borrowed from report after report on the value and importance of career and vocational education as long ago as the 1970s if not decades before.

Unlike schools in most European nations where academic and vocational-technical schools are separately made available to those with proven, tested aptitude leanings in either direction. Our high school students are not so well directed. Here it's

gene h. mcintyre

been found by attempt after attempt to install them all over the state, too many Oregon parents have resisted nearly to the “death” any effort to separate their child from others who are college-bound until they are hit over the head with a figurative hammer that their child is not interested in an academic college education. That alternative-minded child should have been trained during their high school years in a skill or trade that could lead to a well-paying job that provides a living wage.

Another factor is that Oregon is generally unwilling to put the dollars necessary to build career and technical programs with cutting edge facilities, instructors, administrators and working relationships with the world of work. The students who do attend can appreciate significant learning outcomes, have a chance to move from a learning center, as Ferrioli writes, “prepared for real family-wage jobs in today's workforce.”

At the end of the last century I worked as executive director to the state council on career and vocational education. The council was populated by 16 gubernatorial appointees from education, relevant state agencies, business and industry, with its main task to identify and assess all career and vocational education programs in Oregon's high schools and community colleges. It was a difficult task at best because the Vocational Education Division of the Department of Education did not appreciate a group outside its walls assessing its successes (and—horrors—its failures). Furthermore,

although I testified before appropriate committees of the Oregon Legislature, with information the likes of which Ferrioli references, the distribution of state monies always came up wholly to what my council and I, with hard evidence in hand, advocated.

I hope that the Legislature supports funding for CTE programs all over the state. We'll see whether Salem-Keizer School's CTE program succeeds; if it remains marginal as has been CTE in Oregon, while the principal (not from a voc-tech background) wanting to present success, have the ability to improve on inadequacies or hide behind the modern day bureaucratic slight-of-hand that so often characterizes our public school management operations circa 2016.

Meanwhile, too, when it comes to jobs like those in construction, maintenance, repair work and agriculture, so many workers now are of Hispanic/Latino origin. Because many of these jobs require dirty hands, long hours and exposure to the elements, too many American youth don't want them and will instead resort to crime, marijuana sales, a government handout, etc. Unless this challenge can be dealt with in ways that encourage a change for young people born here, who aren't driven by their parents for status fulfillment, these many jobs will continue to be filled by newcomers from Central America. Hence, a grand redesign of our high schools with as much vocational as academic opportunity could make a huge difference. If Ferrioli is sincere, he'll rally his associates and the governor around a secondary school consequential make over.

(Gene H. McIntyre's column appears weekly in the *Keizertimes*.)

## Keizertimes

Wheatland Publishing Corp. • 142 Chemawa Road N. • Keizer, Oregon 97303  
phone: 503.390.1051 • web: www.keizertimes.com • email: kt@keizertimes.com

Lyndon A. Zaitz, Editor &amp; Publisher

## SUBSCRIPTIONS

One year: \$25 in Marion County, \$33 outside Marion County, \$45 outside Oregon

## PUBLISHED EVERY FRIDAY

Publication No: USPS 679-430

## POSTMASTER

Send address changes to:

Keizertimes Circulation  
142 Chemawa Road N.  
Keizer, OR 97303

Periodical postage paid at Salem, Oregon