

Federal courts could turn on next 2 elections

Among the most important numbers in contemplating the 2016 presidential election and, for that matter, the races this November for the U.S. Senate, are 81, 78, 78, 76. These are the ages, respectively, of Supreme Court Justices Ruth Bader Ginsburg, Antonin Scalia, Anthony Kennedy and Stephen Breyer. Who replaces them, and who serves on the lower federal courts, will affect each of our lives for decades to come.



ERWIN CHEMERINSKY
CONTRIBUTING WRITER

Over the past few decades, most justices have left the bench in their early 80s. Lewis Powell, William Brennan, Thurgood Marshall, Harry Blackmun, Byron White and William Rehnquist all left soon after their 80th birthdays.

But the ages of Ginsburg, Scalia, Kennedy and Breyer make it very likely that either President Obama or his successor will have several vacancies to fill. The president's latitude in picking justices obviously is determined by the political composition of the Senate.

If the Senate is controlled by the president's party, virtually any nominee for the Supreme Court would be confirmed. But if the Senate is controlled by the other party, the president is much more constrained. The rejections of Ronald Reagan's nomination of Robert Bork and Richard Nixon's nominations of Clement Haynsworth and Harold Carswell occurred when the presidents were Republican, and the Senate was controlled by Democrats.

This November, as is true every two years, one-third of the senators are up for election. As recently as a few months ago, pollsters gave the Republicans a two-thirds chance of taking over the Senate. Now, that power switch is seen as much less likely. The widely respected pollster Nate Silver, now gives Republicans a 55 percent chance of taking the Senate. But, with close Senate races in so many states — Alaska, Colorado, Georgia, Iowa, Kansas, Kentucky, New Hampshire and North Carolina — it really could go either way.

If Republicans gain control of the Senate, President Obama will get few, if any, judges confirmed to the lower federal courts. Republicans already have made clear that they plan to shut down the judicial confirmation process as payback for Democrats invoking the so-called "nuclear option" and eliminating the filibuster for most judicial nominations. If Republicans have the Senate, and Justice Ginsburg were to resign after the court's next term, President Obama would be constrained to pick someone much more conservative to take her place.

If Democrats keep the Senate, including a 50-50 tie, which would be broken by Vice President Joe Biden, then President Obama can have his choices easily confirmed. Nine of the 13 federal appellate courts now have a majority of active judges appointed by Democratic presidents. This would increase in the next two years. Justice Ginsburg and, perhaps, Justice Breyer, could step down knowing that their seats would be taken by justices who share their views and values.

The stakes are huge in determining who replaces Ginsburg, Breyer, Scalia and Kennedy. The other justices are likely to remain for many more years. Clarence Thomas is 66, Samuel Alito is 64, Sonia Sotomayor is 61, John Roberts is 59, and Elena Kagan is 54.

If Ginsburg and Breyer are replaced by conservatives, there will be a solid conservative majority for years to come. There surely would be five votes to overturn *Roe v. Wade* and to allow states to prohibit abortions, five votes to eliminate racially sensitive admissions plans by colleges and universities, and five votes to allow far more government support for religion and religious involvement in government.

But if Scalia and Kenedy are replaced by a Democratic president, the effects will be equally profound in the opposite direction.

The focus on the Supreme Court should not obscure the importance of the lower federal courts. Last year, the Supreme Court decided 68 cases. In the vast majority of instances, even on the most controversial issues, the lower federal courts get the last word. And who will be on these courts will be greatly affected by the outcomes of the November Senate races.

A president's judicial picks are among his most long-lasting legacies. The elections in November and in 2016 will have a huge influence on the composition of the courts — and thus on all of our rights — for many years to come.

Erwin Chemerinsky is dean of the UC Irvine School of Law.

EDITORIAL

Verbal report not worth the paper it's written on

Garden Grove audit needs to be in writing, and shared.

With all the accusations being thrown at the Garden Grove Fire Department at the moment, you'd think someone would want a written record of any findings that come out of investigation into those issues. But, according to a recent report in the Register, a \$24,000 audit being prepared by Management Partners and commissioned by City Manager Matt Fertal will be expressed only verbally.

"A written report has not been provided at this time nor has Management Partners been instructed to prepare one," Deputy City Manager Maria Stipe explained in an email exchange with Tony Flores, a City Hall watchdog, and obtained by the Register.

Further, the Register notes, "Management Partners was verbally informing Fertal of its findings, and he would relay the information to the City Council, Stipe wrote."

While it is good that the City Manager's Office is taking the accusations into account, which include claims that mandated hazardous material inspections of businesses were not conducted in 2012, even though businesses

were charged for them, nepotistic hiring practices and a predilection for favoritism in promotions, such an accounting into the allegations would likely hold more weight if the findings were actually written down somewhere.

If \$24,000 in public funds is being spent on an audit, the public has a right to know what the audit discovers. Further, if confidential personnel information prevents the report from being fully disclosed, the public's appointed representatives on the Garden Grove City Council should, at least, be privy to the findings.

"Transparency is always what we strive for and what we desire," Councilman Chris Phan told the Register. "A written report is always good — I don't see any reason not to have one. I think we'll definitely have a discussion about this going forward."

Mr. Fertal has set the city on the right track to resolve concerns about the city's Fire Department, but only with proper and transparent accounting will his efforts show any results.

RICK MCKEE / CAGLE CARTOONS



LETTERS TO THE EDITOR

InterVarsity is welcome at CSUF

InterVarsity, like all faith-based student groups, is welcome on California State University campuses. Hundreds of faith-based groups prosper among the thousands of student organizations on CSU campuses. These student groups receive official recognition and associated benefits, as long as they comply with CSU policy, which is based on state law.

InterVarsity Christian Fellowship has declined to comply with CSU's legally-mandated non-discrimination rules prohibiting discrimination in membership and leadership, by requiring its leadership candidates to sign a statement of faith. California law makes it unlawful for CSU to allow student organizations to discriminate in membership or leadership, on religious or other protected grounds.

This is not a new rule. It has been in effect since 1961. Only InterVarsity has raised an issue with this. Hundreds of other religious student groups operate on campus. InterVarsity flourished previously under non-discrimination rules and it was not until quite recently that the group altered its bylaws to require the statement of faith. As academic institutions, CSU campuses provide invaluable learning opportunities. By adhering to state law, InterVarsity can demonstrate openness and tolerance, or they can continue to impose policies that violate CSU policy and state law and forfeit access to public resources funded by the state and students.

Either way, InterVarsity is

welcome on campus. CSU is committed to working with InterVarsity and all student clubs in a spirit of welcoming openness.

Framroze Virjee
executive vice chancellor and general counsel, California State University

WHERE ARE THE MODERATE MUSLIMS?

I was intrigued by "Don't blame Islam" [Opinion, Sept. 21], by two Chapman University professors. They believe that our best and brightest researchers and scholars, among them American-Muslim scholars, as well as Muslims serving in the Obama Cabinet, could inform policymakers and leaders. I assume these folks could enlighten the rest of us in the West on Islam's fundamental "values of respect, honesty, kindness and care."

But, shouldn't that be the goal of the 1.2 billion Muslims worldwide? Why aren't they more vocal in repudiating radical Islam? Or, to quote Edmund Burke, "All that is necessary for the triumph of evil is that good men do nothing."

I tend to believe what Brigitte Gabriel, a Lebanese Christian whose family suffered under "moderate" Islam, has so often stated: "Islamic fundamentalism and extremism keeps countries backward and is the root cause of terrorism."

This cancer metaphor has metastasized, and no one, including the mainstream Muslim majority, knows what to do about it.

John Yenne
Huntington Beach

ENVIRONMENTALISM HYPOCRISY

How can so-called "environmentalists" by the hundreds of thousands drive their automobiles from all

over the place, and converge in big cities to protest driving cars and increasing carbon dioxide? That is precisely what they did, just as they do every single Earth Day. What insanity.

John Jaeger
Irvine

SPACE EXPLORATION BENEFITS MANKIND

Regarding "Boeing, SpaceX picked to ferry astronauts" [Business, Sept. 17]: In 1961, President John F. Kennedy put forth a daunting, if not unbelievable, promise that this nation would place a man on the moon within the decade. The experts considered this to be on approach to ludicrous.

In the subsequent eight years, the nation galvanized behind this effort, even during the worst of the Vietnam War. And the world celebrated on July 20th, 1969.

All of humanity benefited from the "space race." Inventions like open heart surgery are the tip of an iceberg of technologies and everyday gadgets, brought about by the Space Race, have augmented countless lives. The unity from "man's greatest accomplishment" has long since vanished. Diversity has become polarity. Fighting and killing knock at war's door across half of the globe.

Maybe space exploration is not the answer, but, globally, we are in need of one.

Free enterprise has begun this journey. Unity is necessary for funding and will spread the elation of successes and buffer the unfortunate losses. This nation must again lead the way. The mission? Saving humanity.

Patrick Winton
Cypress

Why don't more people run for office in O.C.?

By JACK WU
CONTRIBUTING WRITER

For the third time since its inception in 1991, Laguna Hills has canceled its city council elections because of a lack of candidates.

A list from the Orange County Registrar of Voters details 33 school districts, water districts and library districts where elections are going to be canceled for the same reason — too few candidates.

And, for the second time in two years, the city of Newport Beach will have a council election for an open district seat where there is only one choice on the ballot.

Is life so good in Orange County that no one feels compelled to run for office?

After all, this is the same Laguna Hills that pays its city manager \$380,000 in total compensation per year to manage its 30,000-plus residents.

Aren't we all concerned enough with public education and the Common Core curriculum to at least make the school board elections interesting?

Isn't California going through a major drought? Shouldn't we be concerned how the local water districts handle their water?

Or maybe people just don't care anymore.

In 2012, if you were watching Costa Mesa, you'd think that the sky was falling. An angry and very loud minority came out in droves to every candidate forum, screaming that Mayor Jim Rigeheimer's crew was trying to destroy the city. But when it came time to

vote in the presidential election, Costa Mesa had a lower voter turnout (64.4 percent) than the county average (67.3 percent).

In the 2014 primary election, as an indication of things to come, Costa Mesa mustered a 21.37 percent voter turnout while the county averaged 24.11 percent. Costa Mesa will be lucky to hit 40 percent turnout in November.

In Newport Beach, there are seven council districts, and you have to live in the district to represent it, but votes are cast at large by the entire city. For instance, in 2008, incumbent Councilman Steve Rosansky lost in his own District 2, but, because he received the most votes citywide, he was re-elected.

According to the Residents for Reform Political Action Committee, in the past decade, Newport Beach has been encumbered with over \$571 million in debt, its budget has increased by 172 percent — from \$110 million in 2003 to \$280 million in 2014 — while, according to the city's website, its population has gone up by 7 percent (80,661 in 2003 to 86,874 in 2014).

Newport Beach also has the highest per capita unfunded pension liability per resident in Orange County, according to the Orange County grand jury, as well as the highest ratio of full-time equivalent employees per resident in the county.

So you'd think that people would be in an uproar and would want to change the direction of that ship.

But in 2012, the District 2 (West Newport Beach) seat was up for election as an open seat for the first time in 12 years, and only one person put their name in the hat to run — now-Councilman Tony Petros.

In 2014 the Balboa Peninsula/Lido Isle District 1 seat only had one person file for candidacy — Diane Dixon.

So why are there no people wanting to run for City Council from the most westerly districts in Newport Beach? Is life that good in those parts of the city?

A former mayor of Newport Beach once said not to bother with the Balboa Peninsula and West Newport because they don't vote. With a transient population filled with absentee landlords, perhaps that's why no one wants to run for office, either.

Or maybe life is good. Too good for democracy, apparently.

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