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# How Trump will shape the US Supreme Court

America's highest court is likely to become even more politically partisan as the president-elect looks to fill the vacant ninth seat, writes **James Zirin**

The US election result will determine the future of the country's Supreme Court. Now ideologically deadlocked at 4-4 since the death in February of the rock-ribbed conservative Justice Antonin Scalia, the justice who fills the ninth seat will tip the balance.

Accepting the nomination as Donald Trump's running-mate, Mike Pence said: "Americans should know that while we are filling the presidency for the next four years, this election will define the Supreme Court for the next 40."

**God, gays and guns are the hot-button issues** coming up before the court. Throw in campaign finance and abortion, and the justices' work is cut out for them. Court watchers speculate that three other vacancies may soon occur by reason of death or retirement.

Before the justices of the US Supreme Court go into conference, each shakes the hand of the other eight. The ritual is supposed to signify a shared commitment to the constitution and the rule of law. But over the past 15 years the justices have been deeply divided, making partisan decisions in cases left and right by 5-4 and 6-3 votes.

Now the judiciary looks set to become even more politicised. The president-elect wants to appoint justices of "similar views and principles" to Justice Scalia, who will not vote to abolish the Second Amendment, which guarantees certain gun rights.

Trump's first list consisted of five federal appeals court judges appointed by the Republican president George W. Bush and five state supreme court justices appointed by Republican governors. All are white, and eight of the 11 are men. They were recommend-

ed by various conservative think tanks.

Trump had said that it "will be a horrible day if Hillary gets to put her judges in", implying that the right-wing future of the court hangs in the balance. Clinton, in turn, wanted to appoint justices who will pursue a liberal agenda on abortion rights and campaign finance reform.

Neither candidate pledged to appoint only justices of vast experience

## 'The hot issues are God, guns and gays, campaign finance and abortion'

and deep engagement with the law.

Presidents of both parties tend to appoint US Supreme Court justices who share their politics. But presidents are sometimes surprised by their choices. Earl Warren's liberal performance on the bench as chief justice famously disappointed Dwight D. Eisenhower. David Souter surprised George H.W. Bush. Franklin D. Roosevelt wanted to reward the Dixiecrats for their support in the 1936 election so he appointed Hugo Black, an ardent New Dealer.

Roosevelt was confident as to how Black, who had served in the Senate for a decade, would come out on his social and economic programs. He overlooked the fact that Black was a former Ku Klux Klan member, who had spoken out against the Catholic Church at Klan meetings throughout Alabama. On the bench, Black turned out to be a staunch protector of constitutional rights and one of the most influential 20th-century justices.

The court's modern partisan divide began when Ronald Reagan appointed Justice Scalia in 1986. Scalia, unanimously confirmed by the Senate, was determined to push a right-wing agenda. He became the unabashed leader of the conservative wing. In the most politically partisan of cases, he cast the deciding vote in *Bush v. Gore*, effectively electing the president.

Since the Bush presidency, which resulted in the appointments of Samuel Alito and John Roberts, the court has **often voted in partisan blocs**, and the justices admit as much. "We [liberals] have made a concerted effort to speak with one voice in important cases," said Justice Ruth Bader Ginsburg last year.

Scalia exacerbated the situation in death as in life. With an eight-person bench, the potential for a 4-4 tie is a reality. In the seven months since his death, this has happened three times in important cases involving unions, immigration and voter registration in North Carolina. In all, Scalia's presence on the court would have probably changed or else reinforced the outcome. If changing judges changes law, we may ask what law is.

And whoever fills the Scalia seat, if the American public widely holds that the Supreme Court is but just another political branch of government, it will eventually abandon all trust in judicial decisions, and we will be well on the road to anarchy.

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