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Low-information voters and Scalia's impact on the 2016 race

By JOSHUA SPIVAK

The death of Supreme Court Justice Antonin Scalia rocked the political world. Washington is currently erupting in a pitched battle over whether the Senate has to vote on whichever nominee that President Obama is sure to send. There are dire warnings from both sides of an extended period of deadlock without a full complement of Supreme Court justices, and a belief that a potential Supreme Court fight can be enough to tip the election.

What has been left out of the discussion of the possible impact on the 2016 election is how little most Americans know or care about the Supreme Court. Repeated polls have shown that a small minority of Americans can attach the name John Roberts to the Chief Justice job — a 2010 Pew poll had only 28 percent; in 2012, a Findlaw poll put the number at 20 percent. This is no new result. For decades polls have found that only a fraction of voters can name any members of the Supreme Court. And this governmental illiteracy cuts across educational groups — an American Council of Trustees and Alumni poll in August 2015 found that 10 percent of college students thought that the august Judge Judy was on the nation's highest court.

We can probably acknowledge one basic fact about the voters who know the names of Supreme Court justices — they are ones who are most likely going to vote in November. But most of these voters are more likely to have already made up their mind on whom they are voting for. It's hard to believe that the appointment or rejection of one Supreme Court justice will sway that many of these voters. Arguably, the Supreme Court fight could help drive up turnout with these knowledgeable voters, but once again, we can suspect that these voters already come out to the ballot.

It is possible that simply the fact that people are alerted to the existence of a vacancy in the court will help drive interest in the election. After all, most potential voters are probably aware of some recent Supreme Court decision — at the very least, the Obamacare and gay marriage rulings are firmly implanted in the nation's current political discourse. But it is hard to imagine that, as a number of commentators have noted, voters are thinking that most important reason to cast a ballot in November is based on whom the next president would choose for a Supreme Court nominee.

So what are pundits talking about when they feel that the appointment can make it an impact on the election if, in reality, so few of the possible swing voters are going to pay attention? The bigger issue here may be optics. A significant portion of possible swing voters are what is called "low-information" voters — they are not paying attention to the major issues in the campaign. As the previous polls suggest, these are the same voters who may not know anything about the courts. But they do get an impression on how the parties are behaving and they may not be okay if they believe one party is misbehaving.

Here the Republicans are at a decisive disadvantage. Due to the considerations of primary voters, who are both more knowledgeable and more upset about any possible Supreme Court appointment, Republican presidential candidates and members of the Senate had to race forward to denounce any possible Obama pick. Most Republicans would be putting themselves in electoral peril if they show even the slightest support for an Obama nominee who can then

change the Court for decades to come. This position may be a winning one in a primary race, but it is certainly no help in a general election.

What we are already see is Democrats painting Republicans into a corner as being obstructionist and putting their own personal gain ahead of the country for promising to withhold a vote. The fact that leading Republicans were so quick to denounce any possible choice before Obama made a nomination does not help their claim. The Republican counterargument is based on the claim of hypocrisy — that Democrats have stated that they would behave the same way in the past. This certainly could serve to mitigate the Democrats claim of unfairness, but it doesn't stop any voter from possible viewing the Republicans as being “unfair” and needlessly obstructionist.

The fight over the Scalia nomination is likely to keep Washington tied up in knots for months. It is also likely to results in a continual push that the choice may be a decisive factor in the 2016 election. But most likely, it is only from the standpoint of how voters are viewing the parties' behaviors that will matter.

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