THE PHYLLIS SCHLAFLY REPORT

Courts Hang in Balance of the Election

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Seventy percent of the federal judiciary has now been appointed by liberal Democratic Presidents Bill Clinton and Barack Obama. Four or eight more years of a liberal president such as Hillary Clinton would establish Leftist dominance of the third branch of government for the foreseeable future.

That is not something any working American, Republican or Democrat, should want.

The U.S. Supreme Court is currently divided evenly at 4 to 4 between Democratic and Republican nominees, and the split is really 5 to 3 in favor of liberals on important social issues about which Justice Kennedy sides with the Left. The vacancy of Justice Antonin Scalia, the conservative appointed by Ronald Reagan, hangs in the balance with this upcoming presidential election.

In addition to filling Justice Scalia's vacancy, the next president could fill several additional Supreme Court seats during his term. Every conservative decision that was rendered by a 5-4 or even 6-3 vote could be overruled, such as the 5-4 *D.C. v. Heller* decision that recognized an individual right to bear arms under the Second Amendment.

Donald Trump promised Phyllis Schlafly that he would nominate justices like the late Justice Scalia to the U.S. Supreme Court, which she repeated when she endorsed him on March 11th. Last month Trump made a special trip to give a eulogy at Phyllis's funeral, so there is no reason to doubt his promise to her about appointing Scalia-like Justices to the Court.

A victory by Trump would prevent the Supreme Court from ordering taxpayer-funded abortion, which was averted by a mere 5-4 vote in the decision of *Harris v. McRae* (1980). The stopping of the Equal Rights Amendment by Phyllis Schlafly prevented liberals from obtaining a constitutional right to taxpayer-funded abortion, but if Hillary Clinton wins then she would appoint a fifth vote to overturn the Hyde Amendment and begin requiring federal funding of abortions nationwide.

Many lower court vacancies are also up for grabs, though they are given less attention by the media. There are two vacancies on each of the U.S. Court of Appeals for the Third, Fifth and Seventh Circuits, and vacancies on the Fourth and Eighth Circuits too.

Despite how the federal judiciary depends so heavily on the outcome of this presidential election, there was not a single question about this important issue in the first presidential debate. Moreover, as Donald Trump pointed out, Hillary did not even mention the concept of "law and order" in her response to a debate question to her about violence.

The good news is that the public may not be fooled by the denial by the mainstream media of the immense impact this election will have on the courts. The turnout by the public to hear Donald Trump at his events has been nearly 30 times the turnout to listen to Hillary Clinton's rhetoric.

Since the national political conventions were held in July, an estimated 337,995 have attended rallies by Donald Trump. Fewer than 5% of that total – a meager 13,970 – have been at rallies held by Hillary Clinton during the same period, and on Saturday Trump filled an auditorium in Pennsylvania that is called the largest indoor sports complex in the country.

Obama won Pennsylvania by more than five percentage points in 2012, and by more than ten points in 2008. Before Trump came along with his emphasis on making America great again, and ending disastrous trade deals, Democrats considered Pennsylvania to be a safe 20 Electoral College votes in their favor.

But Pennsylvania is very much in play, and polls show nearly a tie between Hillary Clinton and Donald Trump there. As Trump remarked to his overflow crowd in Pennsylvania, if he wins there then he will be in great shape to win nationwide.

Pennsylvania has suffered from the Obama Administration's actions against coal and other traditional energy sources, policies that Hillary Clinton would surely continue. Trump, on the other hand, has indicated his support for all forms of energy, including coal.

One of Justice Scalia's last official acts before he unexpectedly passed away was to provide the fifth vote for a 5-4 decision to block burdensome new environmental regulations by the Obama Administration that are opposed by 29 States. But if Hillary Clinton fills Justice Scalia's vacancy, then the Court would shift to uphold onerous environmental energy regulations despite opposition by the vast majority of States.

The hard-fought *Hobby Lobby* decision, which established by a 5-4 vote a right to religious liberty by family-owned businesses, would also be lost if Hillary Clinton wins. She would surely replace Justice Scalia with a new justice who opposes the *Hobby Lobby* outcome.

Donald Trump has promised to appoint judges who will respect the Constitution. With the judiciary hanging in the balance this election, that is compelling reason enough to vote for Trump.

John and Andy Schlafly are sons of Phyllis Schlafly (1924-2016) whose 27th book, The Conservative Case for Trump*, was published posthumously on September 6.*