

# KOCHS FORECAST SCOTUS OBSTRUCTIONISM

## Cato Called For A Refusal To Confirm Clinton's Judicial Nominees

Cato Institute Senior Fellow Ilya Shapiro Blog Post Headline: “The Senate Should Refuse To Confirm All Of Hillary Clinton's Judicial Nominees.” [Cato.org/publications, [10/26/16](#)]

- **Cato Institute Senior Fellow Ilya Shapiro: “If Hillary Clinton Is President It Would Be Completely Decent, Honorable, And In Keeping With The Senate's Constitutional Duty To Vote Against Essentially Every Judicial Nominee She Names.”** According to a blog post by Cato Institute senior fellow Ilya Shapiro, “So when you get past the gotcha headlines, breathless reportage, and Inauguration Day, if Hillary Clinton is president it would be completely decent, honorable, and in keeping with the Senate's constitutional duty to vote against essentially every judicial nominee she names.” [Cato.org/publications, [10/26/16](#)]

## CATO INSTITUTE SENIOR FELLOW ILYA SHAPIRO: “AS A MATTER OF CONSTITUTIONAL LAW, THE SENATE IS FULLY WITHIN ITS POWERS TO LET THE SUPREME COURT DIE OUT, LITERALLY.”

Shapiro: “As A Matter Of Constitutional Law, The Senate Is Fully Within Its Powers To Let The Supreme Court Die Out, Literally.” According to a blog post by Cato Institute senior fellow Ilya Shapiro, “Similarly, if a majority of senators refused to confirm anyone to any offices, or pass any legislation [*sic*] whatsoever, that's their prerogative. As a matter of constitutional law, the Senate is fully within its powers to let the Supreme Court die out, literally.” [Cato.org/publications, [10/26/16](#)]

## CATO SCHOLARS HAVE WIDELY PUSHED FOR SCOTUS OBSTRUCTION

### Cato Institute Vice President For Legal Affairs Roger Pilon

*Pilon Said Supreme Court Nominations Are Political And Too Important To Be Left To A “Lame Duck” President*

**Cato Institute Vice President For Legal Affairs Roger Pilon: Appointing Scalia's Replacement Is “Too Important To Be Left To A Lame-Duck President Who Has Already Done So Much Damage To The Rule Of Law.”** According to a blog post by Cato Institute vice president for legal affairs Roger Pilon, “Before the country in this election year, therefore, is the fundamental question of whether we are going even further in the direction of ever more government — with a court as handmaiden to that — or whether instead we are going to start restoring the restraints the Constitution places on government, as Scalia so often did. That decision is too important to be left to a lame-duck president who has already done so much damage to the rule of law. The people need to decide which direction we will take.” [Cato.org/publications, [2/16/16](#)]

**Cato Institute Vice President For Legal Affairs Roger Pilon: At The End Of The Day, Supreme Court Nominations “Are Political Decisions.”** According to a blog post by Cato Institute vice president for legal affairs Roger Pilon for Cato's At Liberty Blog, “What seems to be forgotten as well is that, at the end of the day, these are political decisions. The Constitution leaves the composition of the courts indirectly but ultimately to the people, a power they exercise through elections. And that is why this next election will be so important.” [Cato.org/blog, [2/16/16](#)]

**Pilon: “Mr. Obama Should Know: More Than Any Other Administration, His Has Lost Before The Court More Than Half The Time, Many Of The Most Important Cases By A Single Vote” And Thus We Should Allow The Election To Decide Such An Important Supreme Court Nomination, Especially After The “People Spoke So Clearly” In 2014.** According to a blog post by Cato Institute director of Constitutional Studies Roger Pilon, “Today, the complaint about an activist Court more often comes from progressives who see that branch as impeding their plans for ever more government. Mr. Obama should know: more than any other administration, his has lost before the Court more than half the time, many of the most important cases by a single vote. Is it any wonder that he wants to fill Justice Scalia's seat as quickly as possible, or that he is already trying to shame Senate Republicans against a filibuster, the very tactic he himself employed against then-Judge Samuel Alito? And that was not a lame-duck year. Given the profound implications for the nation's future

of this president's filling this seat, it is imperative, especially after the people spoke so clearly in 2014, that they be allowed to speak once more about our future before this seat is filled." [Cato.org/publications, [2/19/16](#)]

*Pilon Explained Reagan's Confirmation Of Kennedy Was Different Because The President Was Popular And People Wanted To Bring An End To A Seven Month Struggle*

**Cato Institute Director Of Constitutional Studies Roger Pilon: Reagan's Last Year Of Office Confirmation Of Justice Kennedy Was Explained By The President's Popularity, Plus The Wish To Bring To An End The Exhausting Struggle Of The Previous Seven Months.** According to a blog post by Cato Institute director of Constitutional Studies Roger Pilon for Cato's At Liberty Blog, "More often the nomination of Justice Anthony Kennedy is cited as a parallel for today, but here too there are important differences. In particular, the seat Kennedy holds became vacant not in an election year but in late June 1987 when Justice Lewis Powell, Jr. announced his retirement. The stormy hearings for Judge Robert Bork followed. After that nomination failed, President Reagan named Judge Douglas Ginsburg, who withdrew his name shortly thereafter. Finally, the president nominated then-Judge Kennedy on November 11, 1987, still not in an election year. Kennedy was confirmed on February 3, 1988. The one parallel to today is that President Reagan faced a Senate that was 55-45 Democratic. It is likely, however, that the president's popularity, plus the wish to bring to an end the exhausting struggle of the previous seven months, explains the confirmation vote of 97-0." [Cato.org/blog, [2/19/16](#)]

- **Pilon: In The Modern Era There Is No Close Parallel To The Situation With The Supreme Court Today.** According to a blog post by Cato Institute director of Constitutional Studies Roger Pilon for Cato's At Liberty Blog, "In sum, in the modern era there is no close parallel to the situation today when the presidential primary elections are already underway, the White House and the Senate are held by different parties, the parties are deeply divided, and the most recent off-year elections reflected that divide fairly clearly. The Constitution gives the president the power to nominate a successor to Justice Scalia. But it also gives the Senate the power to confirm, or not. In the end, this is a political matter." [Cato.org/blog, [2/19/16](#)]

### **Cato Institute Director Of Health Policy Studies Michael Cannon**

*Cannon Claimed The Senate Had No Responsibility To Vote On A Nominee And Backed McConnell's "No Vote" Strategy*

**Cato Institute Director Of Health Policy Studies Michael Cannon: "The Senate Does Not Have 'A Responsibility To Vote' On An Obama Nomination."** According to a blog post by Cato Institute director of health policy studies Michael Cannon for Cato's At Liberty Blog, "The Senate does not have 'a responsibility to vote' on an Obama nomination, any more than it had a responsibility to vote on Ginsburg's nomination. The Senate can withhold its consent any way it wants." [Cato.org/blog, [2/16/16](#)]

**Cato Institute Director Of Health Policy Studies Michael Cannon: Senator McConnell's "No-Vote" Strategy Following The Death Of Justice Antonin Scalia Is A Legitimate Course Of Action That Does Not Conflict With Constitutional Obligations.** According to a blog post by Cato Institute director of health policy studies Michael Cannon for Cato's At Liberty Blog, "Senate Majority Leader Mitch McConnell (R-KY) responded to the sudden death of Supreme Court Justice Antonin Scalia with a press release saying, 'this vacancy should not be filled until we have a new President.' Republican presidential candidates Ben Carson, Sen. Ted Cruz (TX), and Sen. Marco Rubio (FL) agree. Hillary Clinton spoke for many Democrats: 'The Republicans in the Senate and on the campaign trail who are calling for Justice Scalia's seat to remain vacant dishonor the Constitution. The Senate has a constitutional responsibility here that it cannot abdicate for partisan political reasons.' Conor Friedersdorf says the no-vote stratagem is 'illegitimate' because 'the Senate does have an obligation to fulfill its 'advice and consent' obligation....A preemptive rejection of any possible Supreme Court appointment is self-evidently in conflict with that obligation.' Clinton and Friedersdorf are wrong. Senators have every right to advocate not holding a vote on an Obama appointment, and not to hold a vote." [Cato.org/blog, [2/11/16](#)]

- **Cannon: "Consent Means The Senate Is Under No Obligation whatsoever Even To Hold A Vote On Any Presidential Appointment."** According to a blog post by Cato Institute director of health policy studies Michael Cannon for Cato's At Liberty Blog, "Clinton and Friedersdorf are overlooking the 'consent' part of 'advice and consent.' Consent means the Senate is under no obligation whatsoever even to hold a vote on any presidential appointment. The Senate's obligation is to do what the Senate wants, and only what the Senate wants. Those are the rules. To try to hold senators to a different rule is to try to change the rules on them—and people tend to resent that. Everyone is free to disagree with the positions individual senators or the Senate as a whole take on individual

nominations or prospective nominations. But there is no question that senators individually or collectively can deny their consent to any actual or prospective nomination for any reason—just as the American people can vote for whomever they want, for whatever reason they want.” [Cato.org/blog, [2/11/16](#)]

- **Cannon: Congress Could Even Deny Obama The Ability To Nominate A Replacement At All Since The Constitution Gives Congress The Power To Decide The Number Of Justices On the Court And Thus Congress Could Just Reduce The Number Of Justices From Nine To Eight.** According to a blog post by Cato Institute director of health policy studies Michael Cannon for Cato’s At Liberty Blog, “Indeed, President Obama isn’t even entitled to nominate a replacement for Justice Scalia—or at least, Congress can deny him that right. The Constitution gives Congress the power to decide how many seats there are on the Supreme Court. In 1789, there were only six. Given sufficient congressional support (i.e., veto-proof majorities in both chambers), Congress could reduce the number of Supreme Court justices from the current nine to eight. McConnell, Cruz, and Rubio could propose doing so right now. It seems strange to criticize senators who are merely expressing in what circumstances they will withhold their consent when Congress has the power to deny the president the ability to fill this vacancy entirely by itself eliminating this vacancy.” [Cato.org/blog, [2/11/16](#)]

### **Cato Institute Senior Fellow Ilya Shapiro**

*Shapiro Encouraged The Senate To Make The Supreme Court An Election Issue And Cheered On Senators Pushing The “No Hearings, No Votes” Strategy*

**Cato Institute Senior Fellow Ilya Shapiro: “Given How Consequential Justice Scalia’s Replacement Will Be, It Would Be Irresponsible For The Senate To Confirm Any Nominee President Obama May Send Them.”** According to a blog post by Cato Institute senior fellow Ilya Shapiro from Forbes, “In other words, this is one of the rare instances where I agree with a strategy laid out by Senate Majority Leader Mitch McConnell and Judiciary Committee Chairman Charles Grassley, namely not to consider any nominee until after the presidential election. To put a finer point on it, given how consequential Justice Scalia’s replacement will be, it would be irresponsible for the Senate to confirm any nominee President Obama may send them.” [Ilya Shapiro – Forbes, [2/14/16](#)]

**Shapiro: The Stakes Are Too High “To Change The Supreme Court’s Direction Without An Interceding Popular Vote” And Since Only 15-25% Of Cases Each Year Are Decided With A 5 – 4 Vote, The Court Will Still Be Almost Fully Functional.** According to a blog post by Cato Institute senior fellow Ilya Shapiro from Forbes, “A new president will take office in 11 months and the stakes are just too high in our politically schizophrenic nation to change the Supreme Court’s direction without an interceding popular vote. On the other side of the ledger, only about 15-25% of the cases each year are decided on a 5-4 vote, so an eight-justice court can be almost fully functional.” [Ilya Shapiro – Forbes, [2/14/16](#)]

**Shapiro: “Justice Scalia’s Death Has Given The Republican Party The Opportunity To Make The Supreme Court Into The National Election Issue” And “Giving The American People An Opportunity To Weigh In On Such An Important Matter Is Every Legislator’s Paramount Duty.”** According to a blog post by Cato Institute senior fellow Ilya Shapiro from Forbes, “This is purely a political debate; I’m not making a legal argument beyond the axiomatic one that the Senate doesn’t have to do anything it doesn’t want to. Justice Scalia’s death has given the Republican Party the opportunity to make the Supreme Court into the national election issue it claims more Americans should prioritize. Refusing to consider President Obama’s nominee—whoever he or she is—certainly ratchets up the stakes in an already volatile campaign, but giving the American people an opportunity to weigh in on such an important matter is every legislator’s paramount duty.” [Ilya Shapiro – Forbes, [2/14/16](#)]

**Shapiro: “Justice Scalia’s Absence – While A Huge Loss For The Nation – Hardly Hampers The Functioning Of The Supreme Court Even If His Seat Remains Vacant Until After The Election, As It Should.”** According to a blog post by Cato Institute senior fellow Ilya Shapiro for Cato’s At Liberty Blog, “In the meantime, Justice Scalia’s absence – while a huge loss for the nation – hardly hampers the functioning of the Supreme Court even if his seat remains vacant until after the election, as it should.” [Cato.org/blog, [2/25/16](#)]

**Shapiro: “The Senate Is Fully Within Its Rights, Given The Unique Nature Of This Judicial Vacancy, To Fulfill Its ‘Advice And Consent’ Function By Telling The President That We Should Let This Fall’s Election Determine The Supreme Court’s Direction.”** According to a blog post by Cato Institute senior fellow Ilya Shapiro, “The Senate is fully

within its rights, given the unique nature of this judicial vacancy, to fulfill its ‘advice and consent’ function by telling the president that we should let this fall’s election determine the Supreme Court’s direction.” [Cato.org/publications, [3/18/16](#)]

- **Shapiro: “I’m Heartened, And Very Pleasantly Surprised, By The Steel We’ve Seen Thus Far In Republican Senatorial Spines.”** According to a blog post by Cato Institute senior fellow Ilya Shapiro, “And so I’m heartened, and very pleasantly surprised, by the steel we’ve seen thus far in Republican senatorial spines. There will always be time to reconsider this principled stance should conditions on the ground change—even a Hillary Clinton nominee with a Democratic Senate may simply be a ‘diversity’ pick of the same basic ideology—but for now, there’s no reason not to wait for the voters to weigh in on whether we can keep this republic we have.” [Cato.org/publications, [3/18/16](#)]

**Shapiro: The Idea That In These Contentious Circumstances, “A Pivotal Seat Should Be Filled By The Most Radical President In American History Who Has Easily Surpassed Even The Heady Standard Of His Predecessors For Abuse Of Executive Power Is Not To Be Taken Lightly. Hence No Hearings, No Votes.”** According to a blog post by Cato Institute senior fellow Ilya Shapiro, “Here we have the unexpected death of a titan of American jurisprudence, someone who irrevocably changed the way judges interpret law and also was one of the locomotives of the modern conservative legal movement. And at a time when the Court has never been more ideologically split: three conservatives (one of whom, John Roberts, elevates minimalism and deference over the originalism and textualism that Justice Scalia pioneered), four progressives who never defect on major cases, and a swing vote who represented the last bulwark against the evisceration of the First and Second Amendments, the separation of powers, federalism, and any other limits on federal power. The idea that in these circumstances, a pivotal seat should be filled by the most radical president in American history who has easily surpassed even the heady standard of his predecessors for abuse of executive power is not to be taken lightly. Hence no hearings, no votes; sorry Merrick Garland, it’s not you, it’s the fate of the nation.” [Cato.org/publications, [3/18/16](#)]

**Cato Institute Senior Fellow Ilya Shapiro: “Regardless Whether Senate Republicans Are Justified In Not Confirming Anyone To The Supreme Court Until After The Election, Not Holding A Hearing Or Vote On Merrick Garland’s Nomination Is The Honorable Way Of Pursuing That Goal.”** According to a blog post by Cato Institute senior fellow Ilya Shapiro, “Regardless whether Senate Republicans are justified in not confirming anyone to the Supreme Court until after the election, not holding a hearing or vote on Merrick Garland’s nomination is the honorable way of pursuing that goal. This has nothing to do with ‘doing your job’ and everything to do with respecting the nominee.” [Cato.org/publications, [3/22/16](#)]

*Shapiro Criticized Garland For His “Liberal” Record While Also Admitting He Was A Moderate Who Would Be Easily Confirmed Under Different Circumstances*

**Cato Institute Senior Fellow Ilya Shapiro: “Garland Has Shown An Alarming Amount Of Deference To The Government In His Years On The Important D.C. Circuit” And “I Fear That He Won’t Represent The Check On Ever-Expanding Federal Power And Executive Actions To The Same Extent As Scalia.”** According to a blog post by Cato Institute senior fellow Ilya Shapiro, “From my own perspective, Garland has shown an alarming amount of deference to the government in his years on the important D.C. Circuit, which handles appeals from administrative agencies. I also fear that he won’t represent the check on ever-expanding federal power and executive actions to the same extent as Scalia. And if you’re a civil libertarian, his solicitude for law enforcement makes him much less appealing than other judges who had been under consideration.” [Cato.org/publications, [3/17/16](#)]

**Cato Institute Senior Fellow Ilya Shapiro Blog Headline: “Garland Nomination Shouldn’t Change The #NoHearingsNoVotes Strategy.”** [Cato.org/publications, [3/18/16](#)]

- **Cato Institute Senior Fellow Ilya Shapiro: “Now That President Obama Has Nominated An Unassuming ‘Moderate’ With A Sterling Resumé, Should Senate Republicans Abandon Their Position...Of Not Considering Any Nominee Until After The Election? In A Word, No.”** According to a blog post by Cato Institute senior fellow Ilya Shapiro, “Now that President Obama has nominated an unassuming ‘moderate’ with a sterling resumé, should Senate Republicans abandon their position—which I endorsed in these webpages right after Justice Scalia’s passing—of not considering any nominee until after the election? In a word, no.” [Cato.org/publications, [3/18/16](#)]

**Shapiro: “A ‘Moderate’ Appointed By A Democratic President Isn’t Much Different From A ‘Radical’” And “Someone Who Would Only Do ‘Moderate’ Damage To The Rule Of Law Shouldn’t Be Acceptable As A**



**‘Compromise’ Pick.**” According to a blog post by Cato Institute senior fellow Ilya Shapiro, “But second, even when you look into Garland’s impressive qualifications, you realize that, as the indispensable Kevin Williamson points out, a ‘moderate’ appointed by a Democratic president isn’t much different from a ‘radical.’ After all, someone who would only do ‘moderate’ damage to the rule of law shouldn’t be acceptable as a ‘compromise’ pick. Heck, the New York Times says that he’s to the left of Justices Breyer and Kagan, almost as far gone as Justices Ginsburg and Sotomayor.” [Cato.org/publications, [3/18/16](#)]

**Shapiro: Chief Judge Garland’s “Extreme Deference To Administrative Agencies And Law Enforcement (And Any Other Government Actors He Can Find) Make Him In Many Ways Scariest Than Some Firebrand Who Wants To Constitutionalize Bernie Sanders’s Platform.”** According to a blog post by Cato Institute senior fellow Ilya Shapiro, “But even if Chief Judge Garland isn’t the second coming of Justices William Brennan or Thurgood Marshall—the most progressive justices we’ve had—his extreme deference to administrative agencies and law enforcement (and any other government actors he can find) make him in many ways scariest than some firebrand who wants to constitutionalize Bernie Sanders’s platform. To those of us who toil in the legal trenches, fighting to restore the constitutional order after decades of doctrinal deviance, this simply will not do.” [Cato.org/publications, [3/18/16](#)]

**Shapiro: Garland Can Be Described As A “A Pro-Government, Left-Wing Liberal.”** According to a statement from Cato Institute senior fellow Ilya Shapiro from a Cato Daily podcast, “But he’s kind of a pro-government, left-wing liberal I guess is a good way of describing him.” [Cato.org/publications, [3/16/16](#)]

**Shapiro: “GOP Senators Need Not Worry Unduly That Whomever The Next President Nominates...Would Be Worse Than The ‘Compromise’ Nominee Now Before Them” Because “Garland Is Assuredly A Liberal Vote On The Most Controversial Issues.”** According to a blog post by Cato Institute senior fellow Ilya Shapiro, “And GOP senators need not worry unduly that whomever the next president nominates, possibly with a Democratic Senate, would be worse than the ‘compromise’ nominee now before them. Garland is assuredly a liberal vote on the most controversial issues — notably the Second Amendment — but he’s also extremely deferential to administrative agencies and law enforcement.” [Cato.org/publications, [3/22/16](#)]

**Cato Institute Senior Fellow Ilya Shapiro: “Merrick Garland Himself In Any Other Circumstance Would Be Easily Confirmed.”** According to a statement from Cato Institute senior fellow Ilya Shapiro from a Cato Daily podcast, “Merrick Garland himself in any other circumstance would be easily confirmed. He’s basically the best Republicans in their perspective can hope for from a Democratic president and indeed he was on the shortlist the two previous vacancies under Barack Obama when Justice Sotomayor and Kagan were selected and ultimately confirmed.” [Cato.org/publications, [3/16/16](#)]

**Shapiro: “Chief Judge Merrick Garland Is An Honorable Man With A Sterling Resumé” But “That Alone Doesn’t Merit His Elevation To The Supreme Court — Judicial Philosophy Matters — But It Does Earn Him Respectful Treatment.”** According to a blog post by Cato Institute senior fellow Ilya Shapiro, “Chief Judge Merrick Garland is an honorable man with a sterling resumé. That alone doesn’t merit his elevation to the Supreme Court — judicial philosophy matters — but it does earn him respectful treatment. Turning what’s already a toxic process into a kabuki-theater charade doesn’t serve any purpose.” [Cato.org/publications, [3/22/16](#)]

**Shapiro: “Senators Should Feel Free To Meet With The Nominee — No Harm In Social Pleasantries — And Commiserate With Him About Being A Sacrificial Lamb” But “There’s No Use In Going Through The Motions Of What Would Be A Stillborn Confirmation.”** According to a blog post by Cato Institute senior fellow Ilya Shapiro, “No, it’s politically cleaner for Republicans to be honest at the outset and tell Judge Garland that ‘it’s not you, it’s the court.’ Senators should feel free to meet with the nominee — no harm in social pleasantries — and commiserate with him about being a sacrificial lamb. But there’s no use in going through the motions of what would be a stillborn confirmation.” [Cato.org/publications, [3/22/16](#)]

**Cato Institute Senior Fellow Ilya Shapiro: Refusing To Hold Hearings On Merrick Garland For Political Principles Seems Like Unprecedented Obstruction But It Is The Senate’s Prerogative To “Decide How To Exercise Its Constitutional Power To ‘Advice And Consent’ On Judicial Nominations.”** According to a blog post by Cato Institute senior fellow Ilya Shapiro, “When President Obama announced the nomination of Judge Merrick Garland a month later, nothing really changed: this wasn’t about the nominee’s qualifications, but an argument from the political principle that the gaping hole left by a jurisprudential giant shouldn’t be filled until the voters in a polarized nation — who reelected Obama in 2012 but then handed the Senate to the GOP in 2014 — could have their say. This seemed like unprecedented obstructionism, though historically plenty of judicial nominees have never gotten hearings or votes, and the last time that a Senate confirmed a nomination made by a president of the opposing party to a high-court vacancy arising during a presidential election year was in

1888. Indeed, under recent Republican presidents, Democratic senators ranging from Joe Biden to Chuck Schumer to Harry Reid announced that they wouldn't consider any new nominees until after the election. That's literally their prerogative: Just like the Senate can decline to take up a bill passed by the House, or a treaty signed by the president, it can surely decide how to exercise its constitutional power to 'advice and consent' on judicial nominations." [Cato.org/publications, [6/28/16](#)]

### **Cato Institute Research Fellow Trevor Burrus**

*Burrus Recommended That Republicans "Play Politics" With The Nomination*

**Cato Institute Research Fellow Trevor Burrus: Though Washington Did Not Establish A Tradition Of "Conferring In Person With The Senate," "Now That A Crucial Supreme Court Seat Is Open, We Should Create A New Tradition Of 'Substantial Senate Input.'" According to a blog post by Cato Institute research fellow Trevor Burrus for Cato's At Liberty Blog, "Advice and consent' is vague enough that it could mean many things without violating the Constitution. Had Washington continued the tradition of conferring in person with the Senate, then perhaps today we wouldn't have a tradition of 'senatorial courtesy,' but something more like a tradition of 'substantial Senate input' into nominees. Now that a crucial Supreme Court seat is open, we should create a new tradition of 'substantial Senate input.' With a lifetime appointment and few credible threats to their power once seated, a justice can spend 30 plus years steering the course of our country, whether it is to the left or to the right." [Cato.org/publications, [2/23/16](#)]**

**Burrus: Neither Party Looks For An Impartial Justice And Thus The Most Important Characteristics Of Supreme Court Nominees Have Not Been Legal Brilliance And Impartial Judging, But Rather Justices Must Young And "Ideologically Predictable."** According to a blog post by Cato Institute research fellow Trevor Burrus for Cato's At Liberty Blog, "The most important characteristics of Supreme Court nominees are no longer legal brilliance and impartial judging, if they ever were. Rather, prospective justices must be 1) young, so as to influence the bench for as long as possible; and 2) ideologically predictable. Neither party is looking for an impartial justice." [Cato.org/publications, [2/23/16](#)]

**Burrus: Since A Supreme Court Nomination Constitutes "A Lifetime Appointment To A De Facto Super Legislature" "The People—Not Just Those Who Voted For A Given President—Should Probably Have Some Say In Who Sits On That Super Legislature."** According to a blog post by Cato Institute research fellow Trevor Burrus for Cato's At Liberty Blog, "So, should we endorse the idea of a 'nonpartisan' nomination process—the tradition of 'senatorial courtesy'—as a matter of good governance? This is, after all, a lifetime appointment to a de facto super legislature, and the people—not just those who voted for a given president—should probably have some say in who sits on that super legislature. For vulnerable Republicans, dogged opposition to the nominee could cost their seat, which seems to be a kind of democratic feedback we should endorse." [Cato.org/publications, [2/23/16](#)]

**Burrus: Republicans Should Play Politics: "If Trump Emerges From The Convention As The Nominee, And The Polls Still Show That He Will Take A Shellacking From Clinton, Then Garland Should Be Confirmed" But "If Something Crazy Happens...It Could Be Cause To Delay The Nomination Until After The Election."** According to a blog post by Cato Institute research fellow Trevor Burrus, "Republicans best bet is to play naked politics: the Supreme Court is too important to do otherwise. Read the polls and watch the Republican nomination process. If Trump emerges from the convention as the nominee, and the polls still show that he will take a shellacking from Clinton, then Garland should be confirmed. If something crazy happens, and there are many crazy things that could happen, then it could be cause to delay the nomination until after the election." [Cato.org/publications, [3/16/16](#)]

- **Burrus: "Some Republicans Will Keep Saying 'Let The People Decide,' But If There's One Thing We've Learned This Election Year, It's That 'The People' Are Terrifying."** According to a blog post by Cato Institute research fellow Trevor Burrus, "Some Republicans will keep saying 'let the people decide,' but if there's one thing we've learned this election year, it's that 'the people' are terrifying." [Cato.org/publications, [3/16/16](#)]

**Cato Institute Research Fellow Trevor Burrus: The Nomination Process Should Be "Incredibly Political" And If It Looks Like Clinton Is Going To Win They Should Confirm Garland.** According to Cato Institute research fellow Trevor Burrus on FBN's Mornings with Maria Bartiromo, "TREVOR BURRUS: They need to look at the election because who Hillary Clinton, president Clinton would nominate could be much more terrifying than Merrick Garland. So really it has to be incredibly political. It needs to say, look at the political nomination process, if it's Trump coming out of there, if he's still getting shellacked by Clinton a few days before, or wait until after the election, and then in that two month period, then they confirm him. That's what I predict will happen and that's what they should do." [Cato.org/multimedia, [3/17/16](#)]

**Burrus: “I’m Advocating Real Politick Because I’m Afraid Of Justices That Are Worse Than Merrick Garland” And I Think Clinton Will Win The Election.** According to Cato Institute research fellow Trevor Burrus on FBN’s Mornings with Maria Bartiromo, “TREVOR BURRUS: I’m advocating real politick because I’m afraid of justices that are worse than Merrick Garland. The letting the people decide thing, all it is, is just a pabulum. MARIA BARTIROMO: It sounds like you think Hillary Clinton will win then? TREVOR BURRUS: I do and in that sense, don’t let the people decide, confirm someone before. Get someone on the bench before she has someone to nominate. Democracy is a little overrated in this regard as we see what’s happening with Donald Trump and Bernie Sanders.” [Cato.org/multimedia, [3/17/16](#)]

## **Koch Network Opposition To Consideration Of Garland**

### **THE JUDICIAL CRISIS NETWORK HAS WAGED A HYPOCRITICAL ATTACK ON MERRICK GARLAND**

#### **JCN Spent \$3.5 Million On Ads Urging The Senate To Block Obama’s Nomination Of A Supreme Court Justice**

*The Judicial Crisis Network Spent \$1.5 Million Defending Senate Republicans For Their SCOTUS Obstruction Prior To The Garland Nomination*

**The Judicial Crisis Network “Has Already Spent \$1.5 Million Defending Vulnerable Senate Republicans For Backing” McConnell’s “Hard-Line Position” On The Supreme Court Nominee.** According to Politico, “One Nation has already spent millions to support GOP Senate incumbents such as Kelly Ayotte of New Hampshire, Pat Toomey of Pennsylvania and Rob Portman of Ohio. Ayotte and Portman have adopted McConnell’s hard-line position of not even meeting with a Supreme Court nominee. And the Judicial Crisis Network has already spent \$1.5 million defending vulnerable Senate Republicans for backing McConnell’s strategy. The group is well funded enough to continue the campaign through the year once a nominee is chosen, but it hasn’t decided its next ad buy. ‘You’ve seen our first act; I’m sure there’s more to come,’ said Carrie Severino, chief counsel at the network.” [Politico, [2/26/16](#)]

- **JCN Chief Counsel Carrie Severino: “You’ve Seen Our First Act; I’m Sure There’s More To Come.”** According to Politico, “One Nation has already spent millions to support GOP Senate incumbents such as Kelly Ayotte of New Hampshire, Pat Toomey of Pennsylvania and Rob Portman of Ohio. Ayotte and Portman have adopted McConnell’s hard-line position of not even meeting with a Supreme Court nominee. And the Judicial Crisis Network has already spent \$1.5 million defending vulnerable Senate Republicans for backing McConnell’s strategy. The group is well funded enough to continue the campaign through the year once a nominee is chosen, but it hasn’t decided its next ad buy. ‘You’ve seen our first act; I’m sure there’s more to come,’ said Carrie Severino, chief counsel at the network.” [Politico, [2/26/16](#)]

**Judicial Crisis Network Announced It Was “Ramping Up Its Efforts To Oppose President Barack Obama’s Supreme Court Nominee.”** According to Politico, “The conservative Judicial Crisis Network is ramping up its efforts to oppose President Barack Obama’s Supreme Court nominee. The group is launching a six-figure digital ad buy going after Democrats such as Sens. Michael Bennet of Colorado and Joe Donnelly of Indiana. JCN is also targeting Sens. Joe Manchin of West Virginia and Heidi Heitkamp of North Dakota.” [Politico, [2/29/16](#)]

**JCN Launched “A Six-Figure Digital Ad Buy Going After Democrats” In Red States On The Supreme Court. Vacancy.** According to Politico, “The conservative Judicial Crisis Network is ramping up its efforts to oppose President Barack Obama’s Supreme Court nominee. The group is launching a six-figure digital ad buy going after Democrats such as Sens. Michael Bennet of Colorado and Joe Donnelly of Indiana. JCN is also targeting Sens. Joe Manchin of West Virginia and Heidi Heitkamp of North Dakota.” [Politico, [2/29/16](#)]

**“JCN Is Expected To Expand The Campaign To Include Radio And TV Ad Buys.”** According to Politico, “JCN’s Carrie Severino said the ads are about making ‘people realize this is something that is going to be an election issue for Democrats.’ JCN is expected to expand the campaign to include radio and TV ad buys. ‘I think we may well extend this one,’ Severino said. ‘We’re really just getting going.’ The Facebook ad targeting Donnelly highlights the court’s role in overseeing the nation’s gun laws.” [Politico, [2/29/16](#)]

**JCN “Announced...That It Is Spending At Least \$1 Million On A Radio, TV And Digital Advertising Campaign That Urges The Senate To Block Anyone President Obama Nominates” To The Supreme Court.** According to USA Today, “The conservative Judicial Crisis Network announced Thursday that it is spending at least \$1 million on a radio, TV and digital advertising campaign that urges the Senate to block anyone President Obama nominates to replace Supreme Court Justice Antonin Scalia, whose death last week has roiled the political world.” [USA Today, [2/18/16](#)]

- **The Ad Praised Senators Including Kelly Ayotte, Ron Johnson, And Rob Portman “Who Have Sided With Top Republicans And Say The Vacancy Should Be Filled By The Next President.”** According to USA Today, “The campaign, dubbed ‘Let the People Decide,’ praises several senators who have sided with top Republicans and say the vacancy should be filled by the next president. Among them: Republicans facing tough re-election fights this year in battleground states, including New Hampshire Sen. Kelly Ayotte, Wisconsin Sen. Ron Johnson and Ohio Sen. Rob Portman.” [USA Today, [2/18/16](#)]
- **The Ads Additionally Targeted Sens. John McCain, Pat Toomey, And Chuck Grassley & Ran In The Senators’ Home Markets And In Washington, DC.** According to the Washington Post, “The members targeted are Kelly Ayotte (N.H.), Chuck Grassley (Iowa), Ron Johnson (Wis.), John McCain (Ariz.), Rob Portman (Ohio) and Pat Toomey (Pa.). A 30-second television ad titled ‘Let the People Decide’ will run in Washington, D.C. during the Sunday political talk shows and in senators’ home media markets, the group announced. The ad buy includes radio and digital campaigns in addition to TV content.” [Washington Post, [2/18/16](#)]

*JCN Spent An Additional \$2 Million On Ads Specifically Attacking Merrick Garland*

**Judicial Crisis Network Spent \$2 Million On An Ad Campaign Opposing Merrick Garland.** According to Politico, “The conservative Judicial Crisis Network on Wednesday lambasted Merrick Garland, President Barack Obama's Supreme Court nominee, putting into stark relief his record on the Second Amendment, abortion and suggesting that his deference toward government agencies would be to the detriment of the country. The group also announced an immediate \$2 million ad buy to oppose Garland [...] The major ad drop will bring the network's total spending to nearly \$4 million since Justice Antonin Scalia's death. [Politico, [3/16/16](#)]

**The Judicial Crisis Network Ran Ads Suggesting Garland Was “Too Liberal To Serve On The Nation’s High Court.”** According to USA Today, “WASHINGTON – A conservative legal group opposed to President Obama’s Supreme Court nominee is launching a digital ad campaign that paints Merrick Garland as too liberal to serve on the nation’s high court. The 60-second commercial from the Judicial Crisis Network, shared first with USA TODAY, will appear on social media in Iowa, New Hampshire, Colorado and Indiana — states with closely watched Senate races. It also will hit users in the nation’s capital and two solidly Republican states, West Virginia and North Dakota, to target Democratic senators there.” [USA Today, [3/22/16](#)]

**The Ad Calls Garland A “Liberal Extremist” And Says He Would Be A “Tie-Breaking Vote For Obama’s Big Government Liberalism.”** According to USA Today, “Obama and his liberal allies have been working hard to paint Garland as a ‘moderate’ for the Supreme Court,” the ad says. ‘But there is no painting over the truth: Garland would be a tie-breaking vote for Obama’s big government liberalism. The Second Amendment right to keep and bear arms. Gutted.’ Its news release calls the veteran jurist a ‘liberal extremist.’” [USA Today, [3/22/16](#)]

*Hypocrisy On Merrick Garland – Prior To Calling Him A “Liberal Extremist” Who Would Push Obama’s “Big Government Liberalism,” JCN Described Garland As An “Independent” And The “Best Case Scenario” Supreme Court Choice For Obama*

**Prior To The Obama Election, JCN Ran A Campaign “Calling On Senators To Oppose The Obstruction Of Judicial Nominees, To Denounce The ‘Fear And Smear’ Campaigns Led By Extremist Groups Against Nominees, And Recognize The Right Of Every Nominee Sent To The Full Senate To Receive A Full And Fair Up-Or-Down Vote.”** According to a press release from the Judicial Confirmation Network, “Additionally, JCN will be releasing an “Enough is Enough JCN Activist Tool Kit” and membership drive via e-mail that includes: [...] 3. An online petition calling on Senators to oppose the obstruction of judicial nominees, to denounce the “fear and smear” campaigns led by extremist groups against nominees, and recognize the right of every nominee sent to the full Senate to receive a full and fair up-or-down vote.” [Judicial Confirmation Network Press Release, [10/1/08](#)]



**JCN's Carrie Severino: "I Think Judge Garland Would Be Obama's Strongest Candidate Because He Appears To Be Independent Of The President And Less Likely To Simply Rubber-Stamp The President's Liberal Policy Agenda."** According to the Washington Times, "We would support a candidate who will be committed to the limited government described in the Constitution and who would apply the Constitution and laws of this nation fairly and impartially without using his or her judicial position to advance a political agenda,' Carrie Severino, chief counsel and policy director of the Judicial Crisis Network, tells Inside the Beltway. 'Limiting myself to his likely shortlist - I'm assuming someone like, say, Miguel Estrada wouldn't fly - I think Judge Garland would be Obama's strongest candidate because he appears to be independent of the president and less likely to simply rubber-stamp the president's liberal policy agenda when it inevitably comes before the high court.'" [Washington Times, 4/23/10]

**Severino: "We Could Do A Lot Worse Than Merrick Garland. He's The Best Case Scenario We Could Hope For To Bring The Tension And The Politics In The City Down A Notch."** According to the Washington Post, "Carrie Severino of the conservative Judicial Crisis Network said Garland may be far more liberal than his rulings indicate because he has not yet publicly staked out his position on issues such as abortion. 'But of those the president could nominate, we could do a lot worse than Merrick Garland,' Severino said. 'He's the best scenario we could hope for to bring the tension and the politics in the city down a notch for the summer.'" [Washington Post, 4/23/10]

### **Koch Connection**

**JCN Relied On Funding, Totaling Nearly \$4 Million, From The Koch Founded Wellspring Committee.** According to Open Secrets, "To fill its own coffers, JCN has increasingly relied on funding — to the tune of nearly \$4 million, according to IRS documents — from another non-disclosing group, the Wellspring Committee, that's run by Corkery and was founded seven years ago with the help of conservative donors in the network led by billionaire brothers Charles and David Koch. Corkery's entree to that rarefied network came via JCN supporter Arkley, an early attendee of their famed retreats. And Ann Corkery and her husband, Neil — who is JCN's treasurer — are central figures in a cluster of other nonprofits, IRS filings show." [OpenSecrets.org, 3/23/15]

- **Wellspring Contributed More Than \$3.6 Million To JCN From 2010 – 2012.** According to Open Secrets, "In 2010, Wellspring began sending money directly to JCN, giving it and a related organization, the Judicial Education Project, \$400,000; an additional \$306,000 came in 2011, then \$1.5 million in 2012 and \$1.4 million the next year." [OpenSecrets.org, 3/23/15]

**JCN Founder Ann Corkey And Key Underwriter Robin Arkley Went To Fundraising And Policy Retreats Held By The Koch Brothers.** According to Open Secrets, "Robin Arkley, the president and CEO of Security National Corp. who had tapped Corkery to be his political liaison and senior advisor, became a key underwriter of JCN's operations, to the tune of the high six or low seven figures, sources say. The pair went to some of the early fundraising and policy retreats held by the Kochs — events that now draw a glittering cast of wealthy allies and conservative stars to raise millions for the brothers' network of politically active groups. Arkley was also a financial backer of the Federalist Society." [OpenSecrets.org, 3/23/15]

**In 2008, Corkey Was Given Control Of The Wellspring Committee, A "Dark Money Conduit That Began Pumping Funds To Other Dark Money Koch-Backed Groups Like Americans For Prosperity."** According to Open Secrets, "Corkery had a breakthrough year in 2008. Koch operatives gave her the reins to their fledgling Wellspring Committee, a dark money conduit that began pumping funds to other dark money Koch-backed groups like Americans for Prosperity. At the same time, Corkery served as a finance vice chair for Mitt Romney's 2008 presidential campaign." [OpenSecrets.org, 3/23/15]

**The American Future Fund "Received \$750,000 From The Judicial Crisis Network," And "Promptly Gave \$670,000 To The Republican Attorneys General Association."** According to the Huffington Post, "In Iowa, the American Future Fund continues to operate as a front for whomever has the funds. It received \$750,000 from the Judicial Crisis Network, a conservative group promoting a right-wing judiciary and supporting Republican candidates in state attorney general races, and promptly gave \$670,000 to the Republican Attorneys General Association, according to IRS documents." [Huffington Post, 9/12/14]

## **CONCERNED WOMEN FOR AMERICA**

**CWA CEO: "The Republican-Controlled Senate Lives Up To Its Constitutional Duty By Rejecting Another Liberal Judicial Activist On The Court**

**CWA CEO Penny Nance: “The Republican-Controlled Senate Lives Up To Its Constitutional Duty By Rejecting Another Liberal Judicial Activist On The Court.”** According to an opinion by Concerned Women for America CEO Penny Nance, “The Republican-controlled Senate lives up to its constitutional duty by rejecting another liberal judicial activist on the court. In a recent Washington Post op-ed, Iowa’s own senator and chairman of the Senate Judiciary Committee, Chuck Grassley, and Senate Majority Leader Mitch McConnell, made the case for the majority’s actions.” [Penny Nance – Des Moines Register, [2/24/16](#)]

**Nance: If Obama Nominated A “Liberal Judicial Activist... We Have No Constitution. We Have Judicial Tyranny.”** According to an opinion by Concerned Women for America CEO Penny Nance, “But it is these liberal judicial activists who are ‘contrary to core American values.’ They adjudicate based on a ‘living, breathing’ Constitution that changes with the times and that they are the ones to decide what those changes are. In that case, we have no Constitution. We have judicial tyranny.” [Penny Nance – Des Moines Register, [2/24/16](#)]

**Concerned Women For America Legal Counsel Mario Diaz: “Men And Women Of ‘Character’ Are Becoming Harder To Find. Just Thinking Of The Person President Obama Is Getting Ready To Nominate To Replace Scalia Is Enough To Drive The Point Home.”** According to an opinion by Concerned Women for America Legal Counsel Mario Diaz, “Our country is in serious trouble. It is not because of Justice Scalia’s absence at the Court. It is just that this occasion reminds us that time is running out — that men and women of ‘character’ are becoming harder to find. Just thinking of the person President Obama is getting ready to nominate to replace Scalia is enough to drive the point home.” [Mario Diaz – The Blaze, [2/19/16](#)]

### **Koch Connection**

**Inside Philanthropy: Freedom Partners Donated “More Than \$8.4 Million To Concerned Women For America” Between 2012 And 2014.** According to Inside Philanthropy, “For example, since 2012 Freedom Partners has donated more than \$8.4 million to Concerned Women for America, a public policy-focused women's group whose stated mission is ‘to protect and promote Biblical values among all citizens.’ CWA goes to the mat for issues like fighting same-sex marriage, outlawing abortion, allowing prayer in schools, and criminalizing pornography. These are not policy initiatives I typically associate with nonprofits with the word ‘women’ in their names. But then, most charitable endeavors focused on women and girls aren't funded by Koch affiliates, either.” [Inside Philanthropy, [12/3/14](#)]

**Concerned Women For America Received More Than \$8 Million From Freedom Partners Between 2012 And 2013.** According to Freedom Partners tax documents, the organization granted \$8,150,000 to Concerned Women for America in 2012, and \$260,000 in 2013. [Freedom Partners IRS Forms 990 via Freedom Partners, [9/15/13](#); [9/15/14](#)]

## **Previous RKF’s**

### **[Koch Pundits To Follow During the SCOTUS Nomination Fight](#)**

MARCH 18, 2016

As the Supreme Court nomination fight heats up, keep an eye out for some of the Senate Republicans’ notable accomplices—backed by conservative billionaire funders—who are colluding with Republicans in this unprecedented obstruction.

### **[Kochs Come Up Empty With Friedrichs, But Pledge To Fight On](#)**

MARCH 31, 2016

In spite of the coordinated attacks by anti-worker forces, led by those in the Koch Network, public employees were handed a major—if temporary—victory with the Supreme Court’s 4-4 ruling in Friedrichs v. California Teachers Association.

### **[Koch Attack Dogs Jump To Defend Grassley’s SCOTUS Obstructionism](#)**

APRIL 4, 2016

Over the weekend, Concerned Women for America (CWA) once again helped the ranks of right-wing Koch allies attacking the Democrats and pushing for strict obstructionism in the Supreme Court nomination fight. In an op-ed for the Sioux City

Journal, CWA's Iowa state director Tamara Scott argued in favor of Senator Chuck Grassley and Mitch McConnell's refusal to do their jobs: