

Lame Duck Community Comment: Mike Goldsby, March 24, 2016

Lame duck is typically defined as an official holding office during the period between the election of their successor and the inauguration. The Oxford Dictionary and Merriam Webster agree. For the president of the United States, it is that 10 week period, when the successor has been elected but not sworn in.

But this term has been evolving to describe a President who knows they will not run again. It came up most recently following the death of Supreme Court Justice Scalia and the resulting vacancy. Supreme Court assignments are for life so the chance to fill a vacancy is very rare. The President nominates a qualified individual. The Senate votes to confirm or deny the appointment.

The process is usually political and this time especially so, as the current Justices are evenly split; Four are conservative and four are liberal. So, the perceived stakes are a little higher.

Senate Majority Leader Mitch McConnell, a Republican from Kentucky, announced unilaterally that the Senate would not even meet with a nominee until January 2017. McConnell said his party was following a long standing tradition of choosing not to consider any nominees until the next president is selected. Politifact, the non-partisan fact checking organization, calls that statement false. This situation happens so rarely that there is not enough precedent to set a precedent. There have been 25 elections in the last century and four have had Supreme Court vacancies in an election year. More were confirmed than not, but each situation was very different. There are some other examples from the early 1800's, before there was even a Republican party.

McConnell said "The American People should have a voice in the selection process of their next Supreme Court Justice." I guess he means the people of the future and not the people who elected Obama twice. A CBS News Poll found 53% of Americans want the nomination process to proceed and 42% want to wait, for President Trump or President Clinton or President Sanders.

In February, Chief Justice John Roberts, a conservative, delivered a speech and said the Senate should judge a nominee by their qualifications and leave politics out. 10 days later, Scalia died. Obama is nominating Judge Merrick Garland, a 63 year old Moderate. Bernie Sanders backs Garland, but says he is not the most progressive selection.

Democrats claim the Senate has a “Constitutional Responsibility” to consider a nominee, but that is not true. The Senate Majority does not have to do anything, including their job.

The Washington Post points out the irony of this stance. When the Supreme Court is deadlocked, that allows lower court rulings to stand and most of the lower courts lean liberal.

So, Obama has 9 more months and will try to get the constitutional process to proceed. And the Senate Majority will likely try to bet for President Cruz or Trump, instead of taking the advice of Supreme Court Justice Roberts.

This is Mike Goldsby for Community Comment.