

POLITICS & POLICY

Makeup of Supreme Court Becomes a Campaign Issue

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WASHINGTON—Al Gore and the National Right to Life Committee are committed foes, but they do agree about the stakes for this year's election: Voters, you aren't just electing a president, you're electing a Supreme Court that will be around a lot longer.

"Remember," Mr. Gore intoned recently, "they're saying that the next president is likely to appoint three, maybe four, justices of the Supreme Court. Not only a woman's right to choose, but a lot of our individual rights and civil rights are going to be at risk if the Republican Party controls the majority on the Supreme Court for the next 30 or 40 years."

"This," he added, "is a big fight about our future."

So true, says the National Right to Life group, and it circulates Mr. Gore's quotes widely. But just as the vice president seeks to energize abortion-rights voters for what is likely to be a close contest against anti-abortion Republican George W. Bush, the antiabortion lobby wants to mobilize its side. What better call to arms than the enemy's own fighting words?

"He's made it very clear that as president, he will have a test that the court has to be, quote, 'pro-choice,'" the executive director of Right to Life, David O'Steen, says of Mr. Gore.

Political consultants say the Supreme Court isn't now, and never has been, a big issue in presidential elections, except for hard-core voters on each side of the abortion question. The issue is too hard a sell, they say. Voters have to understand the close ideological split on the nine-member court, who is most likely to retire, and how that might affect the balance.

But both Mr. Gore and the abortion-rights lobby are trying to change that, as the vice president competes with Texas Gov. Bush for the independent voters who will decide the election, especially suburban women. The candidates' emphasis on education, and Mr. Gore's on gun control, reflect the courtship of women. But Mr. Gore also is hoping to reach them by raising concerns about the court's future. "He talks about it at every stop," spokesman Chris Lehane says.

Several justices' age and health give rise to the speculation about vacancies. Chief Justice William Rehnquist is 75 years old, and John Paul Stevens will soon be 80. Health problems have dogged both Sandra Day O'Connor, 70, and Ruth Bader Ginsburg, 67. Meanwhile, the court will hear arguments in April in a case about so-called partial-birth abortions; a ruling could spark a broader political debate.

"You can't get the American public interested in the issue of the Supreme Court as an issue by itself, says Republican pollster David Iannelli. "But Gore is aiming for the middle. 'Court' is code for abortion rights to suburban women."

New Order in the Court?

The Supreme Court has had no opening since early in President Clinton's first term. Guess which president appointed which current justice.



- a. William Rehnquist, 75 years old ▶
- b. John Paul Stevens, 79
- c. Sandra Day O'Connor, 70
- d. Antonin Scalia, 64
- e. Anthony Kennedy, 63
- f. David Souter, 60
- g. Clarence Thomas, 51,
- h. Ruth Bader Ginsburg, 67
- i. Stephen Breyer, 61



a. Nixon b. Ford c. Reagan d. Reagan e. Reagan f. Bush g. Bush h. Clinton i. Clinton

Democratic pollster Geoff Garin says, "The question is, to what extent do women think that Bush represents a real threat to a woman's right to choose?" He adds, "There's a very particular audience for this message—college-educated women who are pro-choice and not necessarily pro-Gore."

Helping Mr. Gore spread the word will be the National Abortion and Reproductive Rights Action League. "It's going to be our primary message," says Naral President Kate Michelman, with grass-roots efforts aimed at abortion-rights independents and Republicans in key states. Like Mr. O'Steen on the other side, she won't discuss the lobby's budget or strategy, but she says: "It's going to be enough to position choice as one of the most important issues at stake in this election."

Bush pollster Fred Steeper is among the skeptics. But he adds, "You know, campaigns can make an issue be an issue. If the two campaigns choose to debate something, even if it's a third-tier issue, they can elevate it into a first-tier issue in terms of voters' decisions."

Should that occur, Mr. Steeper insists that the advantage on the court question, and on abortion rights more generally, goes to the Republicans. More antiabortion voters are moved by that single issue than are abortion-rights voters, for whom the right to choose typically is one of many issues.

"The intensity of feelings is disproportionately on the pro-life side," Mr. Steeper says. And that's especially true in the swath of swing states from New Jersey to Missouri that are the biggest battlegrounds in this presidential election. "You really are in pro-life land there," he adds.

Moreover, argues Republican pollster

Ed Goas, the abortion-rights side is all

It's a lot of hard work, but we'll do it." In the GOP presidential primaries, both religious-right activist Gary Bauer and publisher Steve Forbes tried to make the court an issue as they vied for social conservatives' votes. Mr. Bush generally was mum in the party primaries, except to demur each time Mr. Bauer goaded him in GOP debates to pass the anti-abortion "litmus test" by promising to name only anti-abortion justices. The Texan would vow only to choose justices who narrowly interpret the Constitution. But that, and his anti-abortion stand, satisfied the activists.

Former Forbes strategist Greg Mueller is confident the court issue "is going to rise up quite loudly" by this fall, both "to energize party loyalists and to appeal to swing voters"—not just about abortion but also for other matters of business and education.

History offers mixed lessons. Ms. Michelman says Messrs. Clinton and Gore owed their 1992 election in part to abortion-rights activists' warnings about what a second Bush term would mean for a split court. But the story was different in 1980 when President Carter's re-election campaign tried in vain to scare voters with the specter of Ronald Reagan remaking the high court in his conservative image.

As president, Mr. Reagan did get to name three justices—Mrs. O'Connor, Antonin Scalia and Anthony Kennedy—and promoted Mr. Rehnquist to chief justice. Justices Rehnquist and Scalia are the court's most conservative members, while Justices O'Connor and Kennedy are conservative but often swing justices.

As for Mr. Carter, he not only lost re-election, but he left office as the only president of the 20th century—and only the third in history—who didn't get to name a single Supreme Court justice.