What’s At Stake:
Core Constitutional Values and Judicial Independence

The American Constitution Society believes that the Constitution, infused with the core values of genuine equality, liberty, justice, and respect for the rule of law, should be a force to improve the lives of all people. The U.S. Supreme Court is the main safeguard of our constitutional values and cannot be compromised.

For nearly a year, the Senate leadership took the unprecedented step of completely shutting down the confirmation process for President Obama’s mainstream nominee, who had tremendous bipartisan support. By holding this seat open for nearly a year, they have played politics with the Supreme Court.

As the highest court in the land, the Supreme Court, as an institution, must remain independent and any Supreme Court nominee must be open-minded and fair. Events of the last few days have increased the gravity of the decision about who should fill the ninth seat on the Supreme Court. National discourse has centered on the President’s commitment to core constitutional values and his understanding of the importance of rule of law. Indeed, leading constitutional scholars have already raised red flags on numerous issues. Yet the President appears to lack a strong commitment to the Constitution. Throughout his campaign and in recent days, the President repeatedly emphasized that his list of potential nominees would be the most conservative jurists he could find, and he was certain of that because he made sure they each passed a series of litmus tests, including on reproductive rights and gun safety laws. This compromises the independence of the judiciary at a time when we especially need to rely on the courts to make their own assessment of the constitutionality of legislative and executive actions. The Supreme Court is often the last defense for our Constitution and it is imperative that any nominee not be beholden to any one person, let alone the President of the United States.

Any Supreme Court nominee must be willing to look out for everyone, including those who step into the courtroom and those who never walk through the courthouse doors but are deeply impacted by the Court’s decisions. The Supreme Court makes decisions about how we are treated in the workplace, how the law regards women, racial minorities, and those with disabilities, among others, consumer protections, the safety of our environment, our right to vote, and our immigration system – just to name a few issues. As we have seen, one justice matters — the list of 5-4 decisions coming out of the Supreme Court shows that one person’s opinion can change everything about the life of one individual and, indeed, people all across the country. The country is clearly divided on a host of issues, and instead of bringing people together the President has sought out the most divisive figure he could find for the Supreme Court. This nominee does not reflect the will of the people.

The role of the Senate to provide advice and consent requires a full and open review of the nominee’s record. The Senate must ensure the independence of our third branch of government. This is not the time for the White House and Senate to try to rush a lifetime appointment through the process, especially given the stakes.