

POLITICAL DISPATCH

FROM THE PUBLIC POLICY COMMITTEE



The articles below are commentary on current events, intended to encourage further reflection and debate. Except for official Board statements, the viewpoints expressed are those of the authors and do not necessarily reflect the official positions of the Woman's National Democratic Club.

Republicans Say No to “Lame Duck” Supreme Court Appointment— Who Are You Calling Lame?

Within the first hour of the sudden death of Supreme Court Justice Antonin Scalia, Senate Majority Leader Mitch McConnell had decisively emerged from mourning and rejoined the battle against functional democracy. “This vacancy should not be filled until we have a new President,” said McConnell. “Delay, delay, delay,” constitutional expert Donald Trump added, just to clarify. But when it comes to inaction, obstruction, and down-right sabotage, the Republican-controlled Senate already knows the drill.

Republicans say the American people should have a voice in choosing the next Supreme Court Justice. But the American people *have* spoken, and now their voice must be honored. They spoke when they denied last-honest-cynic McConnell his [number one goal](#) by reelecting Barak Obama. And each state had a voice when it originally voted to be governed by the Constitution, including Article II, which clearly states that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Judges of the Supreme Court....”

President Obama—an actual expert on and former professor of constitutional law—knows that. Mitch McConnell, Ted Cruz, Marco Rubio, and all their Senate colleagues know that, too. After all, by their [oath](#) of office they swore to support and defend the Constitution. Past presidents in their final year in office have known that, too, and have a [history](#) of performing their constitutional duty without past Senates balking at performing theirs.

What would Justice Scalia think of this abdication of constitutional responsibility by so many of his most ardent admirers? As the expounder of [textual originalism](#), the doctrine that one should look to the text of the law and interpret it as it was intended at the time it was adopted, Justice Scalia would have pointed out that Article II doesn’t contain any exceptions for what Republican leaders are calling a “lame duck” presidency. Even those who typically disagreed with Justice Scalia find the Republican interpretation of the Constitution laugh-out-loud lame.

Which brings us to the definition “lame duck.” A lame duck presidency refers to the period between the election of a president’s successor and time that successor assumes office. We are obviously not in that period.

However, there’s [another definition](#) of lame duck: an ineffectual person or thing. This hardly describes a president who in the last months alone has taken decisive action on gun violence, immigration, protecting environmentally sensitive lands, and averting a nuclear confrontation in Iran, all in the face of relentless opposition. That doesn’t exactly sound ineffectual.

But what about the obduracy, stalling, and grandstanding by the Senate’s Republican majority that

have rendered this vaunted institution dysfunctional and ineffectual at legislating? By preventing its members from performing their moral and constitutional duty to serve the American people, Republicans have [reduced](#) the Senate to political theater, little more than a partisan tool that sets the bar of expectation pathetically low and still fails to clear it. Now that is truly lame. What we are stuck with might be called a “lame duck Senate.”

Gail Gottlieb
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Trade Policy Cloud's Obama's Climate Legacy

“Climate change is no longer some far-off problem; it is happening here, it is happening now,” said President Obama during his memorable trip to the Arctic in August 2015, just months after approving Shell's drilling off the coast of Alaska.

That contradiction captures the mixed record of our president on what has been described as [the only issue that will matter 100 – and 10,000](#) – years out. Renewables have become the largest new source of electricity after federal tax credits were passed, state targets adopted, and costs decreased. The president had embraced an all-of-the-above climate-change strategy that included so-called “clean coal.” Nevertheless coal has experienced major setbacks. The president's Clean Power Plan (recently stayed by the Supreme Court) and the moratorium on coal leases on federal lands, pending a comprehensive environmental review, may further weaken that polluting sector.

Nationally, a divided Congress has blocked cap-and-trade legislation and the phasing out of fossil fuel subsidies. Internationally, the president rejected the controversial Keystone XL pipeline ahead of the Paris Climate Talks, then advanced a global accord of voluntary, nonbinding commitments. If met, those commitments should limit warming to 2.7- to 3.5-degree Celsius versus longstanding, reaffirmed targets of 1.5 or 2 degrees. “By comparison to what it could have been, it's a miracle. By comparison to what it should have been, it's a disaster,” wrote the *The Guardian's* George Monbiot. He, like others, highlighted the need to slow fossil fuel extraction (80 percent must stay in the ground to limit warming to two degrees.)

The president understands climate action will be a crucial part of his legacy. Climate change will devastate humanity by transforming agriculture, hunger, war zones, and clean water supplies. Cross-cutting policies must be marshalled to limit it.

Yet climate protections are being undermined in trade agreements. Strong efforts to include enforceable carbon targets in global climate talks have borne no fruit, even as trade agreements support unlimited monetary compensation for corporations affected by governmental climate action.

President Obama's Trans-Pacific Partnership (TPP), which fails to mention climate change, provides an example of such an agreement. Under the TPP, Investor-State Dispute Settlements would be used to address multinational corporations' claims that government regulations to prevent climate change (or other concerns) will reduce their profits. Banks and corporations would be able to use arbitration panels, whose members may harbor bias resulting from their corporate careers, to sue governments for billions when they act to protect their citizens.

The TPP also promotes the extraction of dirty fossil fuels. It requires the U.S. Department of Energy to approve heavily polluting liquefied natural gas exports to signatory nations. All for what, exactly? Several studies have found the agreement will produce minimal or negative growth, job losses, and

greater inequality. Both Democratic candidates for president oppose the TPP, and Congress should not ratify it.

President Obama also plans to [sign the Customs Bill](#), which contains a negotiating objective to keep the United States Trade Representative from addressing climate change in trade agreements that use the fast track process. Future trade agreements will likely contain enforceable sanctions, like increased tariffs or monetary damages. Why discourage their use in addressing this top priority?

Despite President Obama's urgent warnings in Alaska that climate change could "condemn our children to a planet beyond their capacity to repair," he seems to have curbed his climate ambition. The president should call for creating the [renewable energy future that is possible](#), in parallel with keeping fossil fuels buried. He must call out the corporations that have undermined his climate goals through trade or politics. Such actions will strengthen his presidential legacy.

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Governor Snyder's Politics Are Poisoning Flint's Children

Republican Governor Rick Snyder and a "Tea Party" Republican legislature gained control of Michigan in the 2010 midterm elections. Snyder was eager to implement Koch brothers-inspired changes in governance, which he characterized as "fiscal martial law." By spring of 2011, the Local Government and School District Fiscal Accountability Act (PA4) was rushed into law without public commentary to declare a "fiscal emergency" for any municipality or public service. PA4 set the stage for the tragedy that poisoned both the drinking water and the public trust in Flint, Michigan.

Once the governor declares a "fiscal emergency," he can appoint an Emergency Financial Manager (EFM) who "will exercise any power or authority over any officer, employee, department, board, commission or other similar entity of the local government whether appointed or *elected*." EFMs come to power through corporate or political connections and have absolute control over *democratically elected officials*. There is no redress for an EFM's decisions to seize pensions, confiscate public parks or schools for private development or outsource or insource any public workers (police for instance).

EFM Actions: In 2013, EFM Howard Kurtz decided to end Flint's use of clean Detroit water for cheaper water piped into by a pipeline still under construction. His successor, Darnell Earley, followed that decision with the disastrous choice to forget the proposed pipeline and immediately changed to water from the Flint River. Earley stated \$1.5 million would thus be saved. No studies of Flint River water were ordered, and no environmental experts were consulted. But it was well known that the General Motors plant in Flint had previously refused to use Flint water "because it (the water) rusted car parts."

EFM Earley's second decision, which was horrific, was to omit adding a "corrosive inhibitor treatment" to Flint River water. Omitting the corrosive inhibitor saved \$140 per day but destroyed the linings of the entire Flint water pipe system, allowing lead from the corroded pipes to leech into every Flint citizen's drinking water.

By March 2015, the Environmental Protection Agency (EPA) studies revealed Flint water to be contaminated with chemical and bacterial infestations and violated the Safe Drinking Water Act. EFM Earley and Governor Snyder were notified but did not publicly acknowledge that Flint's water was poisoned. However, Governor Snyder quietly ordered bottled water delivered to all state employees working in Flint.

At the same time, a courageous pediatrician, Dr. Mona Hannah-Attisha, held a press conference and advised Governor Snyder her young patients' blood lead levels had "spiked dangerously high" and that an increasing number of children were being affected. Her results were strongly challenged and she was publically berated for being an "alarmist."

Finally, on January 26, 2016, the U.S. Attorney's office began an investigation into why Flint's water is so contaminated now when it had been clean and clear two years ago. Governor Snyder immediately called a press conference and declared that he was "Sorry about the water I will fix the problem," but he disguised his own responsibility by adding "your government failed you at all levels." He did not offer any state money for bottled water or blood lead level testing from Michigan's Rainy Day fund.

President Obama immediately declared a State of Emergency and has ordered Federal Emergency Management Assistance (FEMA) funds and experts to manage the water crisis. So Governor Snyder continues to refuse personal responsibility for the potentially life threatening consequences of the decisions of his specially appointed EFM Darnell Earley to "save money" for Michigan.

What Now? For now, billions of gallons of bottled water will continue to be paid for by the federal government and donated by service organizations. But the long- term solution needed to end the lead poisoning by Flint River water is to replace hundreds of miles of Flint city water pipes and all water pipes in individual homes, which is likely to take 15 years and cost at least \$60 million, according to e-mails released by Governor Snyder.

To date, no specific plans for complete rebuilding of Flint's water system have been identified. Meanwhile, Flint's citizens continue to be billed \$100 per month for lead-contaminated water that neither humans or farm animals or pets can drink. And Flint's children will be forever diminished intellectually in addition to suffering from other very serious chronic medical conditions.

We will continue to watch Governor Snyder and the citizens of Flint. Follow-up postings will discuss irreversible medical problems of elevated blood lead levels, especially in children. And we will review the environmental racism implicit in "financial martial law" in Flint and other poor cities in America.

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